

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 197/198 OF 2024

BETWEEN: SAMUELA ALOISIO DINATI

Applicant

AND: STATE

Respondent

Counsel: Applicant Present with Mr. Waqanivalagi, Atama of Legal Aid Commission
Mr. Naimila, T for the Respondent

Date of Hearing: 29th August, 2024

Date of Bail Ruling: 12th September 2024

BAIL RULING

1. The above named applicant submitted an application for bail.
2. The applicant on 26th August 2024 filed a supplementary affidavit and submitted the following grounds for his bail:
 - (i) That he has been charged for one count of Aggravated Burglary contrary to section 313(1)(a) of the Crimes Act and one count of Theft contrary to section 291 (1) of the same Act;
 - (ii) That he has acquired the services of the Legal Aid Commission and has been advised that he has a right to be granted bail;
 - (iii) That he has been advised and believed that the primary consideration for the court to grant bail is the likelihood of his appearance in court;

- (iv) That if he is granted bail he undertakes to appear in court for his case whenever it is called;
 - (v) That he also proposes to live in a fixed address which is a settlement in Veisari;
 - (vi) That he also proposes to provide two suitable sureties; and
 - (vii) That he is willing to report to the nearest Police Station and abide by any curfew if deemed fit by the Court.
3. The State objects to bail and filed the supporting affidavit of D/Sergeant 3379 Nitesh Kumar which states the following:

Likelihood of the Applicant surrendering to custody and appearing in Court

- (i) That the primary consideration for granting bail is the likelihood of the applicant appearing in Court to answer the charges against him;
- (ii) That the applicant has the following pending matters before the Courts in Fiji;
 - (a). The Applicant is charged with offence of Burglary and Theft in Criminal Case CF: 1178 of 2021 at the Suva Magistrates Court;
 - (b). The Applicant is charged with the offence of Theft in Criminal Case CF: 423 of 2021 in the Suva Magistrates Court;
 - (c) The Applicant is charged with the offence of Theft in the Criminal case CF: 533 of 2023; and
 - (d) The Applicant is charged with the offence of Aggravated Burglary and Theft in HAC 271 of 2021 at the Suva High Court.
- (iii) That that Applicant has been charged with similar nature of offence in the Suva Magistrates Court and in the High Court. Thus there is the likelihood that the applicant will re-offend if he is granted bail.

Granting Bail to the Applicant Would Endanger the Public Interest or Make the Protection of the Community More Difficulty

4. That bail should be granted unless it is the opinion of the court, that granting bail to accused person would endanger the public interest or make the protection of community

more difficult. Thus, given the nature of the Applicant's pending matters and previous conviction, there is high likelihood that granting bail to Applicant will endanger public interest and will make the protection of community more difficult.

5. That considering the nature and seriousness of the allegations against the Applicant, the applicant should be refused bail considering the need for the protection of the community.

Presumption of Innocence

6. That although the Applicant is presumed innocent until proven guilty, given the evidence against Applicant and the likely imprisonment term if convicted, the respondent submits that the Applicant is unlikely to attend his future court dates if he is enlarged on bail.

Best Interest of Accused Person

7. That Honourable Court can keep the Applicant in custody for two years or more before trial must commence or the applicant be granted bail.
8. That Applicant has submitted that he is married and have children who are facing difficulties without him.
9. That the best interest of the child are a primary consideration, to be considered of first importance together with such other considerations as may require equal but not overriding weight.
10. That whether bail ought to be granted requires the balancing of what may often be competing interest. In this case, it is those of the Applicant to be at liberty for lawful purposes such as to care for his children, against the public interest to be protected from a person who had been convicted for property related offence and faces multiple charges in the Magistrates and High Court for very serious offences.
11. That the Applicant has also stated in his second bail application that he needs bail to prepare his defense. However, the Applicant is represented by Legal Aid Commission and hence the counsel from Legal Aid can visit him in remand to take instructions and prepare his defense.
12. That Applicant's history of offending show the tendency that there is every likelihood that he will commit offences on bail.
13. That Bail Act 2002 allows numerous applications for bail provided they are not frivolous or vexatious. And that the statutory test for a renewed or subsequent application for bail is whether there are special facts or circumstances to consider releasing the applicant on bail.

14. That it is respectfully submitted that the grounds submitted by the Applicant in his second bail application does not meet the criteria required by the law. The Applicant needs to satisfy the court that the change in circumstances are exceptional, abnormal or unusual so that the court is justified in reviewing the refusal or consider favourably the making of a fresh application.

Law

15. I now consider **Section 3(1)** of the **Bail Act** and it states as follows:

“Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted”

16. I am in total agreement that the Applicant under Bail Act has the right to be granted bail. However, the refusal is exception. But when we consider Section 3(1) of the Bail Act, it has limitations.
17. Considering the decision made by Justice Shameem in **Tak Sang Hoa v The State (2001)** [FJHC 15](#) and Justice Fatiaki in Adesh Singh & Others Miscellaneous Act No. **11 and 12 of 1988**. I consider the following factors:
- a. The presumption of innocence;
 - b. Whether the accused to appear to stand trial;
 - c. Whether bail has been refused previously;
 - d. The seriousness of the charges;
 - e. The likelihood of the accused re-offending on bail;
 - f. Any interference with prosecution witness;
 - g. The accused's character;
 - h. The accused's right to prepare his defence;
 - i. The likelihood of further charges;
 - j. The State's opposition to bail.

Analysis

18. Considering the nature of the offence, breaking into someone’s property and stealing of properties. These type of offence have become prevalent in our society today.
19. Considering both the application for bail and affidavit opposing bail by the State I am of the view that the applicant falls within the ambit of Section 19 of the Bail Act.
20. Now I consider Section 19(1). Now I refer to Section 19 (1) of the Bail Act:-

“19. (1) An accused person must be granted bail unless in the opinion of the police Officer or the court, as the case may be-

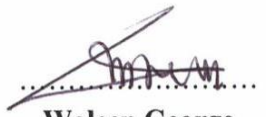
- a) the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
- b) the interests of the accused person will not be served through the granting of bail; or
- c) granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.

21. Considering the nature of the offence, I agree with the State Prosecutor that the Applicant will be endangering the public interest set out in Section 19(1) (c) of the Bail Act. In **Isimeli Wakaniyasi v The State** (2010) FJHC 20; HAM 120/2009 (29th January 2010). His Lordship Justice Goundar states that:

"All three grounds need not to exist to justify refusal of bail. Existence of any one ground is sufficient to refuse bail".

Conclusion

- 22. Considering all, I am of the view that it is with public interest that the Applicant remains in remand pending trial.
- 23. Application for bail is refused.
- 24. You have 30 days to appeal to the Court of Appeal.


Waleen George
Acting Puisne Judge



Dated at Suva this 12th September, 2024

Solicitors: Legal Aid Commission for Applicant
Office of the Director of Public Prosecution for Respondent