IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 225 OF 2024

In the matter of an application for Bail Review pursuant to Sections 3, 14 (1), (2) and 30 (3) of the Bail Act 2002

BETWEEN **LOUIE FRANK PENIJAMINI LOGAIVAU**

APPLICANT

AND: **: THE STATE**

RESPONDENT

Counsel : Mr I, Khan with Mr S. Heritage for Applicant
Mr J. Rabuku with Mr J. Nasa for Respondent

Date of Ruling : 03 December 2024

RULING ON BAIL REVIEW

1. The Applicant is charged with five counts of Unlawful Possession of Illicit Drugs contrary to Section 5(a) and 5(b) of the Illicit Drugs Control Act 2004 and one count of Possession of Property suspected of being Proceeds of Crime contrary to section 70(1) of the Proceeds of Crime Act 1997.

2. The Applicant was first produced at the Magistrates Court at Nadi on 29 January 2024, where he was granted bail on his first appearance. The matter was then transferred to this Court, where the Applicant appeared on 29 January 2024. Considering a Bail Review Application filed by the State, this Court revoked the bail determination and remanded the Applicant pending trial.

3. In revoking the bail, the Court considered the likelihood of the Applicant surrendering to custody and appearing in court, *and* the public interest and the protection of the community. The Court was concerned that the Applicant would leave this jurisdiction and interfere with the witnesses in a context where the investigations were still in progress.

4. The Applicant has been in remand for approximately ten months now. The substantive case is yet to be fixed for trial. The delay is largely due to the non-disclosure of complete documents that included 700 odd photographs to the Defence.

5. The Defence has opposed the application made by the State to destroy the confiscated drugs until alternative testing is conducted. The alternate drug analysis process would further add to the delay. The Defence are to challenge the admissibility of caution statements. The *voir dire* disclosures are yet to be served to the Defence.

6. The photographs disclosed are retrieved in a USB. The Applicant has made repeated requests to have those photographs disclosed in the form of hard copies because he could not access them due to the non-availability of a computer in the remand centre. The request for hard copies were denied by the State considering the cost factor. The Applicant argues that the difficulty in accessing evidence against him has obstructed his right to get proper instructions from his legal counsel.

7. The rights of an accused to effectively defend the charge should be ensured. Every person charged with an offence has the right to be given adequate time and facilities to prepare a defence [Section 14(2)(c) of the Constitution]; to be informed in advance of the evidence on which the prosecution intends to rely, and to have reasonable access to the evidence. [Section 14 (2) (e)] of the Constitution]. The Bail Act provides that the interest of an accused is one of the main considerations for bail determination [Section 18 (1) (b)].

8. In the previous bail determination, while refusing bail to the Applicant, this Court observed: *The Court is hopeful that the ODPP will put extra energy to finalise the PTC issues so that this matter can be fixed for trial within the next three months. This Court will seriously consider granting bail to the Applicant if the trial gets inordinately delayed due to the laxity on the part of the State.*

9. Three months have elapsed since the previous bail determination. Despite extra energy being put by the ODPP into expediting the trial process, the Court is still unable to fix a trial date due to some pre-trial issues, the main of which is the alternate drug analysis. The Court has however indicated that this matter will be given priority and fixed for trial within the first quarter of 2025.

10. The investigations are now complete. The risk of witness interference and the concern that the Applicant would not turn up for trial could be addressed through strict bail conditions. There are new circumstances from the previous bail determination that justify a bail review. Because of the Applicant's difficulties in accessing evidence against him and the inordinate delay in prosecuting the matter, it is in the interest of justice that bail should be granted to the Applicant under strict conditions.

11. While maintaining its objection to bail, the State has proposed strict bail conditions in the event the Court decides to grant bail to the Applicant. It has proposed $20,000 cash bail amongst other conditions. The Applicant claims that he does not have a financial capacity to deposit $ 20,000. Unbearable and excessive cash bail conditions should not operate as a refusal of bail. Therefore a brief means test was conducted to ascertain the quantum of cash bail. The proposed sureties have been vetted and cleared by the ODPP.

12. The Applicant is released on the following bail conditions to be strictly complied with:

    i. The Applicant shall deposit a cash bond of FJD10, 000.00.
    ii. Two sureties shall enter into a surety bail bond of FJD 10,000 each. Each surety must have means to pay FJD 10,000 in case of breach of bail conditions by the Applicant.
    iii. The Applicant shall not leave or travel outside of Lautoka without the permission of the Court. He must live in Lautoka with one of the sureties accepted by Court.
    iv. The Applicant must surrender his passport to Court. A stop departure order is issued preventing the Applicant from leaving Fiji's jurisdiction.
    v. The Applicant must not directly or indirectly interfere with the witnesses for Prosecution.
    vi. The Applicant must refrain from engaging in any illegal activity.

vii. The Applicant must report to Lautoka Police Station on every Saturday between 8 a.m. and 4 p.m.

13. The Application for bail is allowed.

Aruna Aluthge
Judge

3 December 2024
At Lautoka

Solicitors:

Messrs Iqbal Khan & Associates for Applicant
Office of the Director of Public Prosecutions for Respondent