

IN THE FIRST CLASS MAGISTRATES COURT
AT SUVA
CRIMINAL JURISDICTION

Juvenile Case Nos. 08/2017, 09/2017, 10/2017 &
39/2016

The State

V

J. N. S.

For the State : WPC Eka
For the Juvenile : Counsel, Mr. Korotini J.
Date of Ruling : 30th March 2017

Bail Ruling

Introduction

1. The Juvenile, J. N. S. was produced before court on 16/02/2017 in respect of 4 cases on following charges.
 - (i) **Escaping from Lawful Custody** of the Juvenile Remand Centre, Samabula on 5/08/2016, contrary to section 196 of the Crimes Decree No. 44 of 2009 (Case No.08/2017)
 - (ii) **Escaping from Lawful Custody** of the Juvenile Remand Centre, Samabula on 21/12/2016, contrary to section 196 of the Crimes Decree No. 44 of 2009. (Case No. 09/2017)

- (iii) **Absconding Bail** by not attending court on 15/12/2016, contrary to section 2 of the Bail (Amendment) Act No.28 of 2012, an amendment to section 26(1) of the Bail Act Number 26 of 2002. (Case No. 10/2017)
- (iv) **Escaping from Lawful Custody** of SC4104 Volau from Suva Magistrate Courts, on 15/12/2016, contrary to section 196 of the Crimes Decree No.44 of 2009 (Case No. 39/2016)

2. He is currently detained at the Suva Remand Centre.
3. He has submitted a formal Bail Application on 23/02/2017 and seeks court to release him on bail on following grounds;
 - (a) He is 16 years old and wants to go back to school to complete his studies.
 - (b) The conditions of his custody are not good for him as it is crowded and serve unhealthy food.
4. The State has filed its Response to the Bail Application on 09/03/2017, objecting to grant bail on following grounds;
 - i. Juvenile has escaped from lawful custody on several occasions.
 - ii. Whilst on the run he committed the same offence.
 - iii. He will likely to re-offend whilst on bail.
 - iv. He is of public risk.
5. Having carefully considered the submissions by both parties, I will now proceed with my Ruling as follows;

Background

6. The Juvenile is 16 years old and in detention since 16/02/2017.

7. He has escaped from the lawful custody on three occasions and has been charged for breaching bail conditions as well.
8. According to the Social Background Report, the Juvenile had been living with his grandfather at the time of the offence of the substantive case. His father is now willing to take the responsibility of the Juvenile. Father of the Juvenile lives in Naitata, Navua, in a decent living environment.

The Law

Bail Act 2002

9. According to the section 3 of the Bail Act 2002, 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. Subsection (5) of the section 3 further stipulates that bail **MUST** be granted to an accused person under the age of 18 years unless;
 - a. the person has a previous criminal conviction;
 - b. the person has previously breached a bail undertaking or bail condition;
 - c. the offence in question is a serious one.
10. According to Section 3 (3) of the Act, 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. Such presumption is displaced where;
 - a. the person seeking bail has previously breached a bail condition; or
 - b. the person has been convicted and has appealed against the conviction.
11. Section 17(1) of the Bail Act sets out that the court must take into account the time the person may have to spend in custody before trial if bail is not granted. And further says that 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.

12. According to section 19(1) of the Bail Act, followings are the grounds for refusing bail
- a. the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
 - b. the interest 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.
13. The above provisions have been discussed by Madam Justice Shameem in the decision of *Tak Sang Hoa v. The State* (2001) FJHC 15 and in *State v. Singh* (2010) FJHC 600; HAM 187. 2010 (02nd September 2010).

Constitutional Provisions

14. Article 41(1)(e) of the Constitution provides that every child has a right not to be detained, except as a measure of last resort, and when detained, to be held-
- (i) Only for such period of time as is necessary
15. In summary of the aforementioned provisions, the Juvenile is entitled to be released on bail, subject to certain limited conditions. Young persons under the age of 18 years should be given a special attention.

Analysis

16. The Juvenile has spent 1 month and 14 days in custody.

17. According to the provisions of the Bail Act, he is entitled to be released on bail, provided that he doesn't fall into any of categories sets out in section 3 (3), 3(5) and 19(1).
18. The Juvenile is being charged for breaching bail conditions, by not appearing in court, which puts him to one of disqualified categories for granting bail mentioned in section 3(3), 3(5) and 19(1).
19. However, the court should consider whether it is justified to refuse bail based merely on that ground. Grounds for refusing bail are mentioned in section 19 of the Bail Act.
20. One of the said considerations is whether the Juvenile will appear in court to answer the charges against him, if he is released on bail. According to the charge sheet of case No. 10/2017, the Juvenile has failed to appear before court only one occasion.
21. There is no evidence before the court that the interest of the Juvenile will not be served through granting bail.
22. Though the prosecution has mentioned in its response to the bail application that the Juvenile will be risk to the society, there are no enough materials to satisfy the court that the safety of community would be at risk if he is released on bail.
23. Accordingly, it is quite clear that releasing the Juvenile on bail would not endanger the public interest or make the protection of the community more difficult. Further, when considered the age of the Juvenile, his family support and his willingness in pursuing further education, it is my opinion that the interest of the Juvenile will be served through granting of bail rather than keeping him in custody.

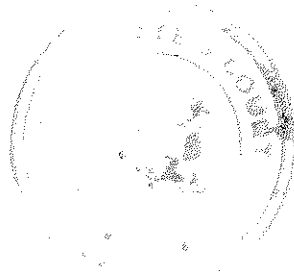
24. The only factor against the Juvenile is that he has breached a bail condition once. Even though I am mindful that this factor is of considerable importance in deciding whether to grant bail, I am in the opinion that the factors which are in favour of the Juvenile outweigh the factors which are against him.

Decision

25. Considering all the above mentioned facts and the law, it is concluded that the prosecution has failed to rebut the presumption in favour of granting bail. Therefore, I decide to grant bail to the Juvenile.

26. However, giving due consideration to his previous conduct it is warranted to impose strict bail conditions. (See the case record for bail conditions)

27. 28 days to appeal.



A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a horizontal line and a small flourish.

Geethani Wijesinghe
Resident Magistrate

At Suva

30th March 2017