

IN THE MAGISTRATES' COURT OF FIJI
AT NAUSORI

TRAFFIC CASE NO: 124/2019

BETWEEN : **SHALESH JATTAN**

APPLICANT

AND : **THE STATE**

RESPONDENT

For the Applicant: Ms.S.Kant(Sairav Law)

For the Respondent: Sgt.Shalend

Date of Hearing: 14th of October 2019

Date of Ruling : 15th of October 2019

RULING ON BAIL

1. The applicant is charged with 02 counts of Dangerous driving occasioning death contrary to section 97(2) (C) of the Land Transport Act No 35 of 1998("Land Transport Act"), 02 counts of Dangerous driving occasioning grievous bodily harm contrary to section 97(4) and 114 of the Land Transport Act and 01 count of Dangerous Driving contrary to section 98(1) and 114 of the Land Transport Act.
2. The applicant was first produced to court on 12th of October 2019 and remanded for bail hearing on 14th October 2019.
3. During the bail hearing prosecution maintained their objections for bail and submitted that the applicant has been charged with some serious offences and for his safety he needs to be remanded. Further the prosecution submitted that this is a case where the public interest also need to be taken in to consideration.
4. The learned counsel for the applicant submitted that her client has no previous convictions or pending cases and also does not have any traveling documents. Further he is willing to abide with strict bail conditions and there is no danger for his life to be remanded for this case. He is not going to interfere with prosecution witnesses.

5. The learned counsel also cited Saukuru v State [2015] FJHC 950; HAM205.2015 (4 December 2015) and Leone v State - Bail Review Ruling [2017] FJHC 370; HAM66.2017 (22 May 2017) to support her submission.
6. Having considered the respective submissions of both parties I would pronounce my bail ruling in the following manner.
7. Section 13(1) (h) of the 2013 Fiji Constitution states that a person who is arrested or detained has right to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require.
8. Further Section 03 of the Bail Act of 2002("Act") provides that the accused person has a right to be released on bail unless it is not in the interest of justice that bail should be granted.
9. Section 3(3) of the Act states that there is a presumption of granting bail to the accused and person who opposing it has to rebut that.
10. But this presumption will be displaced if an accused has previously breached a bail condition or convicted for an offence and appealing against the conviction (Section 3(4) of the Act).
11. The applicant has no previous convictions and pending cases and hence presumption of granting bail would apply to him. The prosecution has to rebut this presumption.
12. The primary consideration in granting bail in a criminal case is the accused person appearing in the Court to answer the charge(section 17(2) of the Act)
13. Section 19(1) of the Act outlines the reasons for refusing bail in a case and they are as follows:-
 - 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 would endanger the public interest or make protection of the community more difficult**
14. In Isimeli Wakaniyasi v State (2010),FJHC 20;HAM 120/2009 (29th January 2010), his Lordship Justice Goundar held that **"All three grounds need not exist to justify refusal of bail, existence of any one grounds is sufficient to refuse bail"**.

15. Now I would consider if the prosecution has satisfy the grounds in section 19 of the Bail Act.

The applicant person unlikely to appear in the Court

16. One of the main objections taken by the respondent in the bail hearing as well as the initial stage is that the applicant is charged with some serious offences. The prosecution is trying to imply because of the nature of the offences the applicant would not come to court if granted bail.

17. The applicant has been alleged to have driven his bus in dangerous manner on 09th October 2019 causing death of 2 victims and causing grievous injuries to some others. It is not disputed that he has alleged to have committed some serious offences which carries harsh penalties also.

18. In **Saukuru v State**(supra) his Lordship Justice Aluthge said:

“The Applicant is charged with Murder along with Theft. Respondent submits that the charge of Murder against the Accused is serious and the Applicant will not appear in Court to answer the charges if bail is granted. However, seriousness of the offence per se does not preclude this Court from releasing an Accused person on bail pending trial. The seriousness of the offence is relevant but not the predominant factor. Tak Sang Haov The State [2001] FJHC 15; HAM0003d.2001s (26 April 2001).”

19. Hence just because the applicant has been charged with some serious offences is not sufficient to deprive his liberty in this case.

20. When the applicant was first produced to the court the prosecution submitted that they have a strong case against him. That was one of the main reason to remand him on the first day as this court wanted to see how strong the evidence against him. But they failed to elaborate about this during the bail hearing. Accordingly I would not consider about this factor.

21. The applicant as admitted by the prosecution is a first offender and also has no pending cases in the courts. It appears that he got a permanent residence with strong family background and willing to provide 2 suitable sureties.

22. Hence I find the prosecution has failed to satisfy the applicant would not appear in the court if granted bail even though he has been charged with some serious offences.

Interest of the applicant

23. The prosecution submitted that for the safety of the applicant he needs to keep in custody. This has been strongly objected by the counsel for the applicant.
24. It has to be noted that there is no materials before this court to show that the applicant is in any danger as alleged by the prosecution. Even if I accept this argument, it is not a ground to remand a suspect. It is the duty of the law enforcement authorities to protect a suspect even if he is alleged to have committed some serious offences in this country.
25. In Tak Sang Hao v The State(supra) Justice Shameem stated as follows:

"In respect of remanding persons for their own protection, I doubt that section 34(6) permits such a justification for remand on its own. I note that such justification was included by statute in England (the Bail Act), and is not one of the developed factors relevant for bail, under the European Convention on Human Rights. As Fatiaki J said in Pita Vuli -v- The State Miscellaneous Act No. 8 of 1990, at page 2, 3:

"As to the safety of the applicant himself, it is the court's view that this alone is an insufficient ground for depriving a person of his liberty.

If I might say so, the protection, safety and security of persons in this country rests primarily with the police and not with prison wardens. Furthermore it is not suggested that the police would not be able to carry out its normal responsibilities in regard to the applicant or that he has received life-endangering threats."

I therefore disregard the prosecution's suggestion that the Applicant's life is at risk if he is released, particularly because no evidence has been presented to me that the Applicant has been threatened by any person or persons, or that his release will result in public disorder.

26. I have also observed the applicant when he appeared in the court and noted that he got some injuries in his body which could have caused from this accident. Even though this court has already given orders for him to take for proper medical treatments I would agree with the counsel for the applicant that it would be better for him to attend to further medical treatments whilst staying with his family members.
27. Hence I find the prosecution has failed to satisfy also that the applicant needs to be remanded for his own interest.

Public Interest and protection of the community.

28. Final ground to consider is if public interest and protection of community would be served by refusing bail to the applicant.

29. The prosecution submitted that this is a matter that has drawn public interest. Tragedy of this magnitude where some children had died and others were injured would draw national interest as well as sympathy. But the applicant's liberty can't be deprived to quell public outcry. In this court he is presumed to be innocent until the judgment is delivered. Withholding the bail should not be used as a punishment even for an accused that is alleged to have committed serious crimes in this country.


30. Also there is no evidence to show the applicant would interfere with any of the prosecution witnesses in this case. The prosecution has failed to satisfy granting bail to the applicant would danger the community.

31. Hence subject to following conditions I enlarge the accused on bail:

- a. **Bail in his own recognizance in the sum of \$1000.00.**
- b. **With 2 sureties in the sum of \$1000.00.**
- c. **. Not to interfere any of the prosecution witnesses.**
- d. **. Not to reoffend.**
- e. **Report to nearest Police Station Every Saturday from 8am-6pm.**
- f. **Stop departure order issued and also to surrender the traveling documents to court and not to apply for new documents.**
- g. **Not to change the address without the permission of the court.**

32. 28 days to appeal.




Shageeth Somaratne
Resident Magistrate