

IN THE MAGISTRATE'S COURT OF THE REPUBLIC OF FIJI  
AT SUVA

CRIMINAL CASE No: 31/2024

STATE

-vs-

LAISIASA ROKOBULUDRAU

BEFORE : Mr. Lakshitha Jayawardhana, Resident Magistrate

COUNSEL : W/Sgt. Latu, L. for the Prosecution  
Accused appeared in person

RULING ON BAIL

**Background**

1. The accused LAISIASA ROKOBULUDRAU has been charged before this court for one count of **Robbery** contrary to section 310 (1) (a) (b)(i) of the Crimes Act 2009. He was first produced before this court on 03-01-2024. Prosecution objected for him to be enlarged on bail and this Court directed to file bail application formally. It was filed on 09-01-2024 and prosecution obtained time to response. Police prosecutor made oral submissions as well as in response to the bail application of the accused filed on 13-03-2024 objected to the same .

**The Law**

2. Section 13 (1) (h) of the Constitution of the Republic of Fiji has conferred the following right to every arrested person: "Every person who is arrested or detained has the right to be released on reasonable terms and conditions, pending a charge or trial, unless the interest of justice otherwise require."
3. Section 3 of the Bail Act 2002 read as thus:
  - "3. -(1) 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.
  - (2) Bail may be granted by a court or, subject to section 8(2), by a police officer.
  - (3) 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.
  - (4) The presumption in favour of the granting of bail is displaced where-

(a) *the person seeking bail has previously breached a bail undertaking or bail condition; or*  
(b) *the person has been convicted and has appealed against the conviction.*"

4. General provisions for bail determination are provided in section 17 and according to section 17(2), the primary consideration is the likelihood of the accused person in appearing in court to answer the charges against that person. In the case of **Fiji Independent Commission Against Corruption v Tuisolia** [2009] FJHC 159; HAM045 & 048.2009 (4 August 2009) Gounder J. stated that: "*Under the Bail Act, the primary test for bail is whether the accused will appear for trial. Section 23(a) of the Bail Act provides that bail must be granted unconditionally unless the court considers that conditions should be imposed for the purpose of ensuring the accused's surrender into custody and appearance in court. The conditions of bail should be reasonable, that is, considered on an objective assessment of all the relevant circumstances.*"
5. Section 18 of the Bail Act provides for grounds for rebutting the presumption of bail. Accordingly, the following are the three grounds:
  - (a) *the likelihood of the accused person not surrendering to custody and appearing in court;*
  - (b) *the interests of the accused person;*
  - (c) *the public interest and the protection of the community.*
6. Reasons for refusing bail is described in section 19 of the Bail Act. In section 19 (1) it is stated that:

*"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.*
  - (d) *the accused person is charged with a domestic violence offence and a safety of a specially effected person is likely to be put at risk if bail is granted taking in to account the conditions that could be applied if bail were granted."*
7. The three grounds in section 18 (1) and first three reasons in section 19(1) for refusing bail are compatible. However, in **Wakaniyasi v State** [2010] FJHC 20; HAM120.2009 (29 January 2010) the High Court held that:

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

## **Bail Application of the Accused and the State's Objections**

8. In the bail application filed by accused on 09-01-2024 he had stated, among other things, that he is requesting bail since "de facto partner is eight months pregnant and would like to be with her when she gives birth, looking after his old mother and the sole bread winner of the family."
9. Police prosecutor in her response dated 13-03-2024 objected to the accused being enlarged on bail on following grounds:
  - (a) the accused has two pending matter before another court vide case Nos. EJ 64/20 and EJ 67 /20 where he had been issued with bench warrants,
  - (b) that he has a pending case where the charge against him is escaping from legal custody (CF 1416/23) therefore, there is a high risk of the accused being absconding in this matter as well.
  - (c) the accused had reoffended whilst on bail and thus, granting bail to him would be make the protection of the community more difficult.
10. Prosecution relied on the principles laid down in **Wakaniyasi (supra)** case.

## **Analysis**

11. I now analyse the facts of this bail application with relevant provisions on bail and the judicial decisions of superior courts of Fiji as mentioned herein before.
12. According to section 18 of the Bail Act, there are only three grounds prevail to rebut the presumption provided in section 3 of the Bail Act. Those are: likelihood of not surrendering to custody to appear in court, for the best interest of the accused or the protection of the community. As per section 19(1) of the Bail Act the above-mentioned three grounds and if in a domestic violence offence, the protection of the victim can be considered to refuse granting bail to an accused. Therefore, prosecution has to substantiate the above in their submissions through cogent facts and/or evidence.
13. This is not a case of domestic violence in nature. Out of the three grounds provided in Section 18, the prosecution (the State) stated two ground those are: the likelihood of not surrendering to custody to appear in court if the accused released on bail and public interest/ protection of the community. Prosecution submitted that the accused had allegedly committed offences whilst on bail and he had absconded the court in other matters where he had been issued with bench warrants. One of the alleged offence against him is escaping from lawful custody. Therefore, in careful consideration of those facts, it can be concluded that the accused has demonstrated of high risk of absconding or not surrendering to

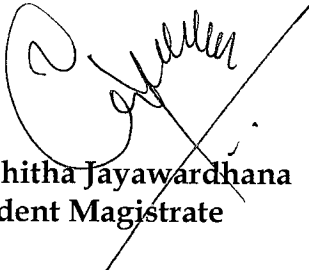
custody to appear in court. Therefore, in par with section 19(1) of Bail Act, I upheld the objections made by the prosecution and refused to grant bail to the accused.

**Order of the Court**

14. In considering the above analysis, this court refuse to grant bail to the accused.

28 days to appeal to the High Court.



  
**Lakshitha Jayawardhana**  
**Resident Magistrate**

At Suva, on this 11<sup>th</sup> day of April 2024.