

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAC 058 OF 2009

BETWEEN:

ROPATE VAKATALE

Applicant

AND:

THE STATE

Respondent

Date of Hearing: 10th July 2009

Date of Ruling: 14th July 2009

Counsel: Accused in person
Mr. S. Qica for State

RULING

[1] This is an application for bail pending trial.

[2] The applicant and four others are jointly charged with one count each of robbery with violence, criminal intimidation and resisting arrest. He applied for bail in the Magistrates' Court but the application was refused on more than two occasions. He now makes this application in the High Court. The application is based on

two main grounds, one is that it is unfair to remand him when his co-accused is on bail, and the other is that he has been in remand for more than five months.

[3] The State opposes bail and relies on the affidavit of D/Cpl. 2561 Vinod Chand, the investigating officer in this case.

[4] Bail must not be refused unless the Court is satisfied of any one of the following matters outlined in s.19(1) of the Bail Act:

- (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.

[5] Subsection (2) provides:

“In forming the opinion required by subsection (1) a police officer or court must have regard to all the relevant circumstances and in particular –

- (a) as regards the likelihood of surrender to custody –
 - (i) the accused person’s background and community ties (including residence, employment, family situation, previous criminal history);
- (b) as regards the interests of the accused person –

- (i) the length of time the person is likely to have to remain in custody before the case is heard;
 - (ii) the conditions of that custody;
 - (iii) the need for the person to obtain legal advice and to prepare a defence;
 - (iv) the need for the person to be at liberty for other lawful purposes (such as employment, education, care of dependents);
 - (v) whether the person is under the age of 18 years (in which case section 3(5) applies);
 - (vi) whether the person is incapacitated by injury or intoxication or otherwise in danger or in need of physical protection;
- (c) as regards the public interest and the protection of the community –
- (i) any previous failure by the accused person to surrender to custody or to observe bail conditions;
 - (ii) the likelihood of the person interfering with evidence; witnesses or assessors or any specially affected person;
 - (iii) the likelihood of the accused person committing an arrestable offence while on bail.”

[6] The applicant says he is 25 years old and single. He resides with his elderly parents and is the sole breadwinner for his family. Previously he was employed as a labourer by a construction company and earned \$80.00 per week.

- [7] The applicant has seven previous convictions since 2001. He has one conviction for escaping from lawful custody and the allegations in this case arose while he was serving a bound over order for an offence of criminal intimidation.
- [8] The circumstance of the alleged offending is that he was involved in an armed home invasion robbery where the occupants were terrorized by the intruders. According to D/Cpl. Vinod Chand the applicant has admitted the allegation under caution. The State says that the applicant has another similar charge pending in the Magistrates' Court (C/F 1857/08).
- [9] The applicant no doubt is entitled to the presumption of innocence. He has been in remand since 22 December 2008. The trial is unlikely to take place until early next year. By that time the applicant would be in remand for more than one year.
- [10] The applicant's complaint that the 4th Accused is on bail and not him is baseless. The 4th Accused's personal circumstances are different. The 4th Accused has no criminal history or any history of escape. He has no other pending case before the courts.
- [11] The applicant's personal circumstances are not the same. The applicant has previously escaped from lawful custody. He has two cases pending for trial. The allegation in both cases is of robbery with violence. The allegation arose while he was on a bound over period for criminal intimidation. The evidence against him is his confession to the police. A confession well proven is of course strong evidence. If convicted the applicant is facing a lengthy imprisonment sentence. All these matters are likely to make the applicant a flight risk and to avoid a trial.

[12] I am satisfied the prosecution has rebutted the presumption in favour of bail.

[13] I am satisfied that the applicant is unlikely to surrender to custody and appear in court for trial and that granting bail to the applicant would endanger the public interest. As regards the interests of the applicant to engage legal representation and prepare for his trial, he can utilize the procedure available to him in the remand centre.

[14] Bail is refused. The applicant will remain in remand pending his trial. He is advised that he has a right of appeal to the Court of Appeal. This Court will not entertain any subsequent application for bail unless the application is founded on some material change of circumstances.

Daniel Goundar
JUDGE

At Suva
14th July 2009

Solicitors:

Office of the Director of Public Prosecutions for State
Applicant in person