

IN THE HIGH COURT OF FIJI

AT LAUTOKA

[CRIMINAL JURISDICTION]

MISCELLANEOUS CASE NO: HAM 128 of 2022

BRADLEY ROBERT DAWSON

V

STATE

Counsel : Mr. Iqbal Khan for the Applicant
Mr. Alvin Singh for the Respondent

Date of Hearing : 1 September 2022

Ruling : 14 September 2022

RULING

1. This is an application for bail pending trial. The Applicant is the accused in High Court Lautoka Criminal Case No. HAC 107 of 2020.
2. On 29 August 2022, the Director of Public Prosecutions (“DPP”) filed Information against the Applicant in the substantive matter. The relevant Disclosures were filed in Court on 26 July 2022 and Additional Disclosures on 17 August 2022.
3. As per the Information filed by the DPP in the substantive matter, the Applicant is charged with one count of Murder, contrary to Section 237 of the Crimes Act No. 44 of 2009 (Crimes Act). The Information reads as follows:

Statement of Offence

MURDER: Contrary to Section 237 of the Crimes Act 2009.

Particulars of Offence

BRADLEY ROBERT DAWSON, on the 9th day of July 2022, at Turtle Island Resort, in the Western Division, murdered **CHRISTE JIAO CHEN**.

4. On 1 September 2022, the Applicant was ready to take his plea. Accordingly, he pleaded not guilty to the charge.
5. The Applicant is an American Citizen. The deceased in the substantive matter is his newly married wife.
6. This application for bail was filed by way of a Notice of Motion for Bail, which was supported by an Affidavit in Support deposed to by the Applicant, on 27 July 2022.
7. Therein the Applicant states that he is 38 years of age and an American citizen with an American passport, visiting Fiji for vacation purposes. He resides at Middle Town, New York and work^s as an Information Technology and System Administrations Officer in Youth Villagers.
8. He deposes that he was arrested for this case on 10 July 2022. He was produced in Lautoka Magistrate's Court on 13 July 2022, and remanded into custody.
9. The Applicant deposes that presently he is not in good health and he has been prescribed certain medications. He needs to consult his medical practitioner and take advice prior to taking the said medications.
10. He further states that he does not have any criminal matters or pending cases before any Court of law either in Fiji or in any other country.
11. The Applicant deposes that his mother who is in America is fully dependent on him and that if he is further remanded in custody, she will suffer mentally. If he is granted bail, he will be able to keep in touch with his mother via phone, so that her health does not deteriorate.
12. The Applicant has deposed that he has arranged with an American family friend to stay at his place in Legalega, Nadi. He has proposed the name of Kelera Vereivalu, who is said to be a family friend, and residing at [REDACTED] as one of his sureties.
13. A separate Affidavit has been filed in Court by one Ifrana Irshad Begum of [REDACTED] [REDACTED] who is the second proposed surety of the Applicant. The said Ms Begum deposes that she is 36 years of age and that the Applicant is a family friend and is known to her for the past 6 years. She has stated that she is willing to stand as a surety on behalf of the Applicant and understands the responsibilities thereof.

14. On 3 August 2022, the Applicant filed a further Affidavit deposed to by him. He has attached to the said Affidavit a certificate from the Tennessee Bureau of Investigation confirming that he has no Tennessee criminal history. He has also attached character references to confirm that he has been a law abiding citizen
15. An Affidavit was filed by Acting Detective Sergeant 4943 Netava Yalayala, Police Officer, based at Criminal Investigations Department, Lautoka Police Station, in opposition to this application for bail. The Officer, who is the Investigating Officer in respect of the case, strongly objects to the application for bail made by the Applicant.
16. A/D/SGT Yalayala deposes that the Applicant is charged with the offence of Murder of his wife Christe Chen. The Applicant was born on 11 October 1983, and is a national of the United States of America (USA).
17. The Applicant got married to Christe Chen in the month of February 2022. The couple had arrived into Fiji from USA on 7 July 2022, to spend their honeymoon at the Turtle Island Resort. The Turtle Island Resort is said to be a luxury 5 star resort located approximate 190 km from Nadi.
18. A/D/SGT Yalayala deposes that the body of the deceased Christe Chen was discovered inside Bure 15 at the Turtle Island Resort, on 9 July 2022. The Officer further deposes that the Applicant had left from the Turtle Island Resort in a kayak on the night of 9 July 2022. The Applicant had been arrested the next day on another island namely Matacawalevu, which is located several kilometers away from the Turtle Island Resort.
19. At the time of his arrest, the Applicant was found with his black wallet, passport, driving licenses of both himself and the deceased, a Visa card in the name of the deceased, several Visa cards and Master cards in his name and USD currency notes and coins amounting to \$1,093.00.
20. A/D/SGT Yalayala deposes that the Applicant had all necessary items in his possession to enable him to leave the country.
21. The Officer further deposes that the State has strong circumstantial evidence against the Applicant in this case. There is strong evidence to establish that the Applicant and the deceased entered Bure 15 of the Turtle Island Resort on the night of 8 July 2022. The cause of death certificate confirms that the deceased's cause of death was due to severe traumatic head injury and multiple traumatic injuries caused by blunt force trauma to the head.

22. A/D/SGT Yalayala further submits that the Applicant has failed to provide the nature of relationship with the two proposed sureties and the two sureties have failed to provide satisfactory explanations as to how they came to know the Applicant.
23. The Officer deposes that the Applicant is charged with the serious offence of Murder and, if found guilty, the Applicant is likely to be imposed a mandatory sentence of imprisonment for life. The Applicant has family and employment ties in the USA. The Applicant works as an Information Technology and System Administrations Officer in the USA. The Applicant has no family ^{or} financial interest in Fiji.
24. On 1 September 2022, the Applicant filed an Affidavit in Response to the Affidavit in Opposition filed by the State.
25. The Learned Counsel on behalf of the Applicant and the Learned State Counsel filed written submissions, and referred to case authorities, which I have had the benefit of perusing.
26. This matter was taken up for hearing before me on 1 September 2022. During the hearing both Counsel for the Applicant and the Respondent were heard.
27. In terms of Section 3(1) of the Bail Act No. 26 of 2002 ("Bail Act"), *"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."*
28. Section 3(3) of the Bail Act provides that: *"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."*
29. In terms of Section 3(4) of the Bail Act, as amended by the Domestic Violence Act No 33 of 2009 ("Domestic Violence Act"), the presumption in favour of granting of bail is displaced in the following circumstances:
 - (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; or*
 - (c) *the person has been charged with a domestic violence offence.*
30. Since there is a domestic relationship between the Applicant and the deceased, the presumption in favour of granting of bail is displaced in this case.
31. In terms of Section 17(2) of the Bail Act 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 or her. Section 17 (1) of the Bail Act states, that when deciding whether to grant bail to an accused person, the Court must take into account the time the person may have to spend in custody before trial if bail is not granted.

32. Section 19(1) of the Bail Act (as amended by the Domestic Violence Act No 33 of 2009), provides for grounds for the Court to refuse to grant bail. The sub section is reproduced below:

"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;

*(c) granting bail to the accused person would endanger the public interest or make the protection of the community more difficult;
or*

(d) the accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted."

33. In forming the opinion required by subsection (1), Section 19(2) of the Bail Act stipulates that Court must have regard to all the relevant circumstances, and in particular to the circumstances enumerated in the said sub section.
34. The primary objection taken up by the State in this case is that in the event of the Applicant being granted bail it is highly unlikely that he will appear in Court to answer the charges laid against him. This is due to the fact that the Applicant is charged with a very serious offence of Murder, and if found guilty, the Applicant is likely to be imposed a mandatory sentence of imprisonment for life, with a judicial discretion to impose a minimum term to be served before a pardon maybe considered.
35. This Court agrees with the contention of the State. Court is conscious of the fact that the Applicant is a Foreign National with sufficient financial means. The Applicant has all family and employment ties in the USA. He works as an Information Technology and

System Administrations Officer in the USA. The Applicant has no family ^{or} financial interest in Fiji.

36. The Applicant is charged with one count of Murder. Therefore, this Court is of the opinion that since the Applicant is charged with a serious offence, there is a high likelihood that he would fail to appear in Court if granted bail.
37. The State is also objecting to the two sureties proposed by the Applicant. The first surety has merely stated that she is a family friend of the Applicant. The second surety also states that the Applicant is a family friend who is known to her for the past 6 years. However, the sureties have not provided any further details as to how they know the Applicant, who only arrived in Fiji on 7 July 2022.
38. In his Affidavit in Support of Bail, the Applicant has deposed that in the event of being granted bail he will be residing with another American National who is said to be another family friend, in Legalega, Nadi. However, during the hearing of this application, it transpired that the said American National is Mr Johnnie Lee Berger, who is an accused before this Court in High Court Criminal Case No. HAC 51 of 2022. The said Mr Berger had been granted bail by this Court on 19 July 2022 and has undertaken to reside at Legalega, Nadi.
39. It is the opinion of this Court that it is highly unsatisfactory for the Applicant to be residing with a person who has been charged with serious offences before this Court, in the event of being granted bail.
40. Therefore, taking into consideration all the above factors, I am of the opinion that this application for bail should be refused.
41. Accordingly, the application for bail pending trial is dismissed.



AT LAUTOKA

Dated this 14th Day of September 2022


Riyaz Hamza
JUDGE
HIGH COURT OF FIJI

Solicitors for the Applicant : **Messers Iqbal Khan & Associates, Lautoka.**
Solicitors for the Respondent : **Office of the Director of Public Prosecutions, Lautoka.**