IN THE SUPREME COURT OF SAMOA

HELD AT MULINUU

IN THE MATTER OF	an application to appeal against decision of the District Court relating to bail pursuant to section 116 of the Criminal Procedure Act 2016.
BETWEEN:	**SAMUELU SU'A a.k.a FAUEGA TOESE,** male of Salelologa and Tanugamanono. *Appellant*
A N D:	**THE POLICE** *Respondent*

Counsel: I. Sapolu and J. Sapolu for appellant
L. Taimalelagi for respondent

Hearing: 22 May 2024 and 06 August 2024

Decision: 16 August 2024

DECISION OF THE COURT

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[1] Defendant faces 104 charges in the District Court alleging misleading the Police, fabrication of evidence, attempt to pervert or defeat the course of justice and various counts of conspiracy among others. He applied unsuccessfully to the District Court for bail, he now appeals that decision pursuant to section 116 (1) of the Criminal Procedure Act 2016 which relevantly provides:

> "**116. Appeals from decision of District Court relating to bail** - (1) If a District Court Judge ….. refuses to grant bail to a defendant (whether before or after conviction), the defendant may appeal to the Supreme Court against that refusal."

By virtue of section 116 (5) the appeal is by way of a rehearing.

[2] As noted in the decision under appeal, the principles for granting bail are well settled and established in a long line of cases beginning with ***Police v Posala*** [2015] WSSC 92 and most recently in ***Police v Pauga*** [2023] WSSC 61. Many of the relevant factors have in fact been codified by section 99 of the Criminal Procedure Act. It is not in dispute that the defendant is not bailable as of right. It can also not be disputed that the charges he faces are serious carrying penalties of imprisonment.

[3] The primary factors for consideration are:

> "**99. Factors relevant to decision as to bail** - In considering whether there is just cause for the defendant to be remanded in custody or for continued detention, a Court must take into account the following:
> (a) whether there is a risk that the defendant may fail to appear in Court on the date to which the defendant has been remanded;
> (b) whether there is a risk that the defendant may interfere with witnesses or evidence;
> .....
> (f) the character and past character or behaviour, in particular proven criminal behaviour of the defendant; ....
> (k) any other matter that is relevant in the particular circumstances"

[4] I will deal with each in turn.

(a) Securing the defendants appearance

[5] It is clear from the evidence before the court including the sworn testimony of the defendant himself that he has a number of different names which appear to be used for different purposes. To begin with he has two different birth certificates: BC 2018/21697 in the name of 'Samuelu Piki Lavasii' born on 30 January 1983 "done on 23 June 1994 by his parents Piki Lavasii and Faaesea Leau Faanunu": annexure A to his affidavit dated 06 August 2024. In evidence he explained that Piki Lavasii is his adopted father. He also has a birth certificate BC 1983/200535 in the name of 'Fauega Asuelu Leautuli Toese' born on 30 August 1983 "done on 08 September 1983 by his parents Asuelu Leautuli Toese and Faaesea Leautuli Faanunu" whom he says are his real parents: annexure A of his affidavit of 06 August 2024. He did not explain why his mother who was part of both registrations provided two different

dates of birth to the Registrar of Births, Deaths and Marriage. The evidence of his half-sister Sita Piki Ah Far whose father is also Piki Lavasii (tinā faatasi tamā eseese) is that "Fauega" is the other name of the defendant but one that is rarely used: paragraph 4 of her affidavit dated 08 March 2024

[6] Also produced before the court was a recent Medical report on the defendant attached to both the sisters affidavit and the defendants affidavit dated 05 February 2024 reciting his name as 'Samuelu Toese a.k.a Asuelu Toese' date of birth 30 August 1983. This is a different date of birth and different combination of his names.

[7] As well there is Respondents Exhibit R-2 from the Samoa National Provident Fund submitted by consent advising that according to their records, the defendant is known as:

> "Samuelu (Leautuli) Piki – Record showing for a "Samuelu Piki" with NPF# HHC00, DOB 30/12/1983"

Again a different date of birth and a different identity which would have been established by the defendant himself.

[8] As for a passport, it is not known which name or date of birth the defendant used when he travelled overseas for medical treatment as a child: paragraph 9 of the sisters affidavit ("na ave i fafo o laititi lava i le faiga o lona taotoga i ona vae i Hawaii"). The defendant said in evidence he was then 11 years of age and unsurprisingly, no longer has the relevant document.

[9] The records of the Police show the defendant has a number of aliases. His Previous Conviction Form names him as: "Samuelu Piki aka Sam Leau aka Fauega Leau aka Samuelu Leau aka Fauena Leautuli Toese Su'a" born 13 September 1983, a fourth date of birth. In his various cautioned statements to the Police he uses differing combinations of the names Samuelu and Fauena. Statements which he signed in more than one place.

[10] In his affidavits filed in this matter, he uses 'Samuelu Sua aka Asuelu or Fauega Toese' (05 February 2024) 'Samuelu Piki Lavasii po o Samuelu Sua' (24 May 2024) and 'Samuelu Piki Lavasii aka Fauega Asuelu Leautuli Toese' (06 August 2024). While it is common in this

country for there to be variations in names, I have never struck a case in 40 years of practice where one person has so many different names.

[11] The irresistible conclusion is the defendant has a number of aliases which he deliberately employs for different purposes. Whilst this does not ipso facto make him a flight risk, it shows he possesses the qualities of a chameleon. And an ability and where-with-all to adapt his identity to any given situation.

[12] I am also satisfied that he knowingly evaded the Police in the lead up stages to this matter. He deposes so in paragraph 7 of his affidavit of 05 February 2024. His history also shows an uncanny ability to evade the Police for months even in a small jurisdiction like ours.

[13] There is also an element of taunting the Police in that the defendant despite knowing he was being actively and publically sought in particular in relation to online statements he made in September 2023, took no steps to voluntarily come forward or contact the Police. He resorted instead to giving another online interview on the matter to the New Zealand media on 18 January 2024: paragraph 11 of his affidavit. Shades of the well-known movie 'Catch Me If You Can'.

[14] His history also shows a failure to appear in court in the past. As well as instances of escaping from Police custody: see affidavit of Superintendent Tupai Leleimalefaga paragraphs 9 to 11.

[15] Given these factors, the court cannot be confident that this is a person who can safely be relied upon to appear when required. I agree with the assessment of the learned District Court Judge that the risk of the defendant not turning up is "real and significant" and further that his engagement of counsel in no way alleviates this concern. If anything the evidence tends to show the defendant does not always follow the advice of retained counsel.

[16] Neither can the risk be reduced by imposing stop-orders or Departure Prohibition Orders. Experience has sadly shown that determined defendants find ways around such measures with the most recent example being numerous defendants freely absconding to work under the RSE Scheme despite criminal charges pending against them and such orders being issued.

(b) Interference with witnesses

[17] This aspect is heavily relied upon by the Police: refer paragraphs 12 to 18 of the affidavit of Superintendent Leleimalefaga. Other than challenging the issue in Submissions, the defence called no evidence to rebut the Police allegations that witness tampering has occurred; such as for example evidence from the third party relative of the defendant alleged by the Police to also be involved in the witness tampering. This despite the fact that hearing of this application was deferred from 22 May to give the parties time to prepare and call further evidence. The allegations have not been directly addressed by the defendant in his evidence either.

[18] The argument that the interference occurred pre-charge in my view carries no weight. The crucial point is that irrespective of when it occurred, it shows a pattern of behaviour on the part of the defendant. Sufficient to give rise to a risk that it will continue if the defendant is granted bail. A risk magnified by the fact that there are now some 80 witnesses lined up against him by the prosecution.

(f) Previous character and behaviour

[19] There is no dispute the defendant has a Police record and there is no equally no doubt the convictions are old ones and are for matters of a different character, all but one being for offences of dishonesty. They establish that over 10 years ago the defendant was convicted and imprisoned for proven criminal behaviour. A factor to consider but not necessarily a determinative one.

(k) Other factors

[20] Under this head are a number of other issues, the two main ones being: concern for the safety of the defendant as a former Police informant and secondly, the delay until trial which has now been scheduled for 26 May 2025 some 9 months away.

[21] As to the first, the evidence is conflicting in that the Police say the defendant while someone who often "hung around" (tafao) with the Police, was not regarded as a Police CI (Confidential Informant for the Police). Superintendent Timani's evidence was he was more of a "snitch" reporting on the illegal activities of those he did not like. In contrast was the affidavit of a former Senior Sergeant of Police who said the defendant was a Police CI especially in relation to narcotics cases. This too was the evidence of the defendant.

[22] The District Court solution was to properly order the defendant be kept separate and isolated from other prisoners.

[23] As to the delay till trial, there is no doubt 9 months is a lengthy remand period. However it is clear from this courts decision delivered by Chief Justice Perese on 29 July 2024 in ***Police v Samuelu Leau and others*** (unreported) that this matter has been before the District Court since January of this year and that a 26 August 2024 hearing date had to be vacated due to the unavailability of defence counsels. This followed the vacating of the earlier trial date of 20 May 2024 set by the District Court in an obvious attempt at early resolution of this matter.

Decision

[24] In weighing up whether there is just cause for a continued remand of the defendant in custody and whether the interests of justice require his release on bail, I have come to the following conclusions:

(i) There is a real and significant risk that if bailed, he will fail to appear for trial given his past history and uncanny ability to evade the Police and rely on and make use of his many aliases for differing purposes.

(ii) The court is also satisfied he has tampered with the evidence of prosecution witnesses and there is a significant risk he will continue to do so.

(iii) The court is concerned about the suggestion that he was a former CI and that his safety may be an issue. To this end the Prison Authorities are directed that he

continue to be held in isolation away from the general population and further that the Authorities take any other steps necessary for his safe keeping.

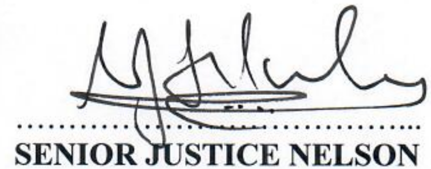
(iv) There is no evidence the defendant suffers from any unusual medical condition that would necessitate his release on medical grounds. The indication from his family of his suffering from sudden seizures is not supported by any medical evidence.

(v) As the defendants are all related, the solution to the matter of a 9-month delay until trial is one that lies well within their own control.

[25] The defendants bail appeal is dismissed.

Suppression Order

[26] As agreed with counsel at the hearing, the significant publicity already given to this matter renders any order prohibiting publication superfluous. The Order issued by the District Court in that regard is therefore nullified.



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SENIOR JUSTICE NELSON