IN THE FIJI COURT OF APPEAL

Criminal Jurisdiction

Bail Application No.2 of 1980

Between:

1. VISHNU DEO
   s/o Bansi
2. SATYA PRASAD
   s/o Gurucharan

Applicants

and

REGINAM

Respondent

S.M. Koya for Applicants
D. Fatiaki for Respondent

JUDGMENT

This is an application for bail pending the hearing of an appeal against the judgment of the Supreme Court delivered at Labasa on the 2nd October, 1980 convicting applicants of offences under Section 340 of the Penal Code and imposing sentences of two years' imprisonment. Lengthy submissions in support of the applications were filed on behalf of the applicants. These may be shortly summarised under two headings:

(a) the complexity of the case;

(b) that by the time the appeal can be heard applicants will have served a substantial portion of the sentences imposed.

With regard to the complexities of the issues involved in the appeal, all that can be said at this juncture is that it does not lie on the Court in dealing with the present application to decide upon those issues. They are to be taken into account only where it appears, prima facie, that the appeal is likely to be successful: Watton (1978) 68 Cr. App. R 293 at p.296. Although I have carefully considered the submissions made by counsel for the applicants I am unable to say that it appears, prima facie, that the appeal is likely to succeed.

The greater part of the argument was formally directed to the issue that if bail is not granted the applicants will have served a substantial portion of their sentences before the appeal can be heard. Mr. Koya pointed out that if the applicants receive the full remission for good conduct - and both applicants have clean records to date - they will be required to serve only sixteen months of the sentences imposed. As it is common ground that the appeal cannot be heard before March, the applicants will have served something over four months of their sentences by that time.

Counsel for the applicants referred to a number of cases based on Charavanmuttu 21 Cr. App. R 184 where bail was granted pending appeal, the Court having regard to the interval of the legal vacation. But there are two factors in the cases cited which do not apply here. The first is that no objection was raised by the Crown for the granting of bail. The second is that it was strongly urged that the appeal could be adequately presented only if the appellant was free to keep in touch with his solicitors. As is said in Wise 17 Cr. App. R 17 :

> "It is useful to see ..... if it would be of assistance for the preparation of a real case for appeal if the appellants were released."

In the present case it was not argued that the adequate preparation of the appeal would be made difficult if the applicants were not released on bail; and the Crown opposes the granting of bail.

It is well established that bail will be granted pending appeal only in very exceptional circumstances. One such exceptional circumstance would be "where there is a risk that the sentence will have been served by the time the appeal is heard": Hatton (supra) at p.296. In the present case it cannot, in my view, be argued that the sentences imposed on the applicants will have been substantially served by the time the appeal is heard. The very exceptional circumstances necessary to justify an order pending appeal cannot here be said to exist.

Accordingly the applications are dismissed.

JUDGE OF APPEAL

Suva,
8 th December, 1980