

**IN THE COURT OF FIJI, FIJI ISLANDS**  
**ON APPEAL FROM THE HIGH COURT OF FIJI**

**CRIMINAL APPEAL NO. AAU0024 OF 2006**  
[High Court Lautoka Cr. Action NO. 20/06]

**BETWEEN:**

**MANOJ KUMAR f/n Bal Ram and  
NILESH PRAKASH f/n Nirbhay Chand**

*APPELLANT*

**AND:**

**THE STATE**

*RESPONDENT*

I. Khan for applicants  
A. Prasad for respondent

**Hearing:** 4 May 2006

**Ruling:** 9 May 2006

**RULING**

The applicants each pleaded guilty to 21 joint counts of larceny by servant committed over a period of approximately three years up to late 2002 by which they obtained a total of more than \$290,000.00. The first applicant was the supervisor of the accounts section in the office where they both worked. The second applicant was his subordinate and working under his supervision.

It appears from the sentencing judgment that \$203,516.00 of the money was recovered by proceedings instituted in New Zealand and a sum of \$87,539 remained un-recovered at the time of sentence. On 13 April 2006, the first applicant was sentenced to 2 ½ years

imprisonment and the second applicant to 2 years. It was not explained how that sentence was made up.

Notice of appeal against sentence was filed on 20 April 2006 and the applicants now apply for bail pending appeal. The grounds of appeal are aimed at obtaining a suspended sentence for both applicants.

Counsel has produced evidence that the balance of the sum is available and can be paid into court. Apart from that, the appeal will largely be concerned with the strength of the mitigation especially in respect of the first applicant.

Counsel suggests that the appeal is unlikely to be ready before the November sitting of the Court by which time a substantial portion of the sentence will have been served. I take into account the portion of the sentence which will have been served but I see little reason why this case should not be ready for the July sitting of the Court.

The court must also consider the likelihood of success in the appeal. If this appeal succeeds it will be because there has been a reassessment of the mitigating factors. That is a matter for the full Court and I do not consider it would be appropriate to determine this application on my views of those.

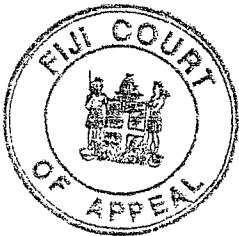
More fundamentally, the courts in Fiji will only grant bail pending appeal if there are exceptional circumstances in the case under consideration which are such that they drive the court to the conclusion that justice will only be done if bail is granted.

I do not consider that this is such case. Tragic though the applicants' present family circumstances are, the nature of these offences and the sentencing guidelines for similar cases set out in earlier appeals to this Court do not suggest there are such exceptional circumstances in this appeal.

I am satisfied that justice in this case will be best assured by directing that preparation of the record be expedited and the case heard in the July sitting of the Court.

I note that there had been no application for leave to appeal, which is required under section 21(1)(c) of the Court of Appeal Act. However, in order to prevent any further delay preventing the hearing in the next sitting, I shall grant leave to appeal without further application.

The applicants are granted leave to appeal sentence but the application for bail pending appeal is refused. It is further ordered that the preparation of the record be expedited and the case listed for hearing in the July sitting of this Court. The appellants' written submissions shall be filed no later than 9 June 2006 and those of the respondent no later than 30 June 2006.



*Gordon Ward*

[GORDON WARD]  
President  
FIJI COURT OF APPEAL

9<sup>TH</sup> MAY, 2006