

IN THE FIJI COURT OF APPEAL

SUVA, FIJI

CRIMINAL JURISDICTION

**(MISC. ACTION No. 012 of 2009)
[HAM 107/08]**

BETWEEN : SALENDRA SEN SINHA

APPELLANT

AND : THE STATE

RESPONDENT

**BEFORE THE HONOURABLE
JUSTICE OF APPEAL : Mr. JUSTICE JOHN E. BYRNE**

: APPELLANT IN PERSON

**: P. BULAMAINAIVALU and MS R. DRAU for the
Respondent**

**Date of Hearing and
Ruling : 28th OCTOBER, 2009**

***RULING ON APPLICATION FOR BAIL
PENDING TRIAL***

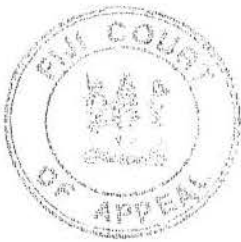
- [1] This is an application for bail pending trial but is really an appeal from a ruling of Mr. Justice Goundar in the High Court in Criminal Miscellaneous Case No. HAM 107 of 2008 which was delivered on the 2nd of December 2008.
- [2] On that day the Judge had before him a Notice of Motion by the State seeking the following orders:
- a) revocation of the first respondents' bail;
 - b) forfeiture of \$5,000 cash posted for security by the 1st respondent;
 - c) payment of \$5, 000 surety by the second respondent.
- [3] The appellant was then represented by the late Mr. J. Semisi. He and one Cheryl S. Kumar had misled the High Court when on the 25th of April 2008 that Court had extended the appellant's bail.
- [4] He had been charged on 3rd April 2008 with fraud related offences involving a substantial amount of money. He was granted cash bail in a sum of \$5,000 with conditions after arraignment in the Magistrate's Court and the case was transferred to the High Court for trial.
- [5] Mr. Justice Goundar was satisfied that there was a serious of breach of bail conditions by the Appellant. The appellant had admitted breaching his conditions. He had absconded from the jurisdiction of the High Court knowing his case was set for trial. According to his travel history provided by the Immigration Department, the appellant travelled under the name of Vinod Prasad and with a Passport No. 721417 while his passport was with the Court Registry. He did not seek the High Court's

consent before travelling overseas, he changed his place of residence without the consent of the Deputy Registrar and further he failed to report to the Police Station as ordered by the Court.

- [6] After taking into account the appellant's admission of breaching bail conditions and the serious charges he is facing in various Courts in Fiji, the Judge was satisfied that he was a flight risk and if granted bail he would not appear for his trial.
- [7] Today he sought leave to appeal from Mr. Justice Goundar's decision claiming that although his trial date was fixed for hearing on 27th April 2009, because of the unavailability of Judges in the High Court it was not possible for the trial to proceed on that date. I am informed by Mr. Bulamainaivalu this morning that his trial has been re-fixed for hearing in April 2010.
- [8] The Appellant complained that the Court had not delivered to him any copy of Mr. Justice Goundar's reasons for refusing bail in writing, but when I questioned him on this, he admitted first that he was represented by Counsel and secondly that he was also present in Court when Mr. Justice Goundar delivered his ruling. He then admitted that he did know the reasons why he was refused bail, being those which I have just stated.
- [9] In those circumstances his other complaint that the Judge upon refusing bail had failed to inform the appellant of the procedure of reviewing bail immediately as provided in Section 30 of the Bail Act has no merit. The appellant knew why he had been refused bail.

[10] I am not satisfied that if I were to grant bail to the appellant he would not abscond again as he did before. He stated that he had no travel documents with him so he could not travel abroad but I do not doubt, given his first absconding, that he would find ways and means of acquiring albeit false travel documents. In short, I consider the appellant cannot be trusted and he is refused bail pending his trial next year.

Dated at Suva this 28th October, 2009.



A handwritten signature in cursive script, reading "John E. Byrne", is written over a horizontal dotted line.

JOHN E. BYRNE
JUDGE OF APPEAL