

IN THE COURT OF APPEAL
[On Appeal From the High Court]

CRIMINAL APPEAL NO: AAU0030 of 2013
(High Court Case No: HAC 15 of 2013)

BETWEEN : **SUDESH MANI NAIDU**
Appellant

AND : **THE STATE**
Respondent

Coram : Goundar JA

Counsel : Appellant in Person
Mr. L. Fotofili for the Respondent

Date of Hearing : 7 May 2014

Date of Ruling : 2 June 2014

RULING

[1] The appellant is charged with murder. His trial is pending. He applied for bail pending trial in the High Court. On 21 February 2013, Nawana J refused the application for bail. On 8 March 2013, the appellant filed a timely appeal against the decision of the High Court refusing bail. While this appeal was pending for hearing, the appellant was sentenced to 20 months' imprisonment in an unrelated case on 18 September 2013 (*Naidu v State Cr. Mis. Case No. 397/13*). Currently, he is a serving prisoner.

[2] The right of appeal against a bail decision by the High Court is governed by section 21(3) of the Court of Appeal Act. Section 21(3) provides:

“The Court of Appeal may, if it gives leave, entertain an appeal from the High Court against the grant or refusal of bail, including any conditions or limitations attached to a grant of bail, upon the application either of the person granted or refused bail or of the Director of Public Prosecutions.”

- [3] Section 35(1) of the Court of Appeal Act gives a single judge power to grant leave. A single judge also has power to dismiss an appeal if satisfied the appeal cannot possibly succeed and is frivolous (section 35(2)).
- [4] The refusal of bail by the High Court was within the discretion of the High Court. The principles that guide the exercise of that discretion are governed by the Bail Act. For this appeal to succeed, the appellant will have to demonstrate that the learned High Court judge erred in the exercise of his discretion by acting upon a wrong principle, or by taking into account irrelevant considerations, or by failing to take into account some relevant considerations.
- [5] The appellant filed three pages of hand written submissions arguing he should be granted bail. The gist of his submissions is that he should be granted bail so that he could support his minor son who is depended on him. It is clear from the appellant's submission that he is not alleging any error by the High Court judge in refusing bail. His appeal to this Court is a fresh application for bail pending trial.
- [6] A single judge has no power to grant bail pending trial. The power to grant bail pending trial lies with the Full Court. But the Full Court will only grant bail if there was an error made by the High Court in refusing bail.
- [7] In his ruling the learned High Court judge properly considered the principles of bail under the Bail Act and made the following findings at paragraph 9:

“Having taken into account the criteria laid down in the foregoing provisions, I conclude that:

- (a) There is an apparent likelihood of the applicant not observing bail conditions in view of his previous breaches;
- (b) There is a likelihood of the applicant committing another offence/s whilst on bail in view of his past record;

(c) The circumstances, nature, seriousness of the offence are such that *'interests of justice'* and *'public interests'* override the *'right [of the applicant] to be released on bail'*; and,

(d) The presumption in favour of the granting bail is displaced in view of his failure to attend court, whilst on bail before."

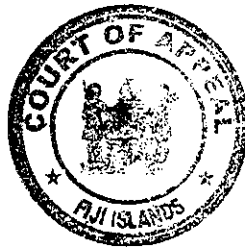
[8] The above findings were made on the evidence led by the State. Appellate courts are slow to intervene with a trial court's findings unless it could be demonstrated that those findings were not available on the evidence. In the present case, the appellant does not allege the learned judge's findings were made in an error.

[9] For these reasons, I am satisfied the appeal is not arguable, but is frivolous.

Result

[10] Leave to appeal is refused.

[11] The appeal is dismissed under section 35(2) of the Court of Appeal Act.




.....
Hon. Justice D. Goundar
JUSTICE OF APPEAL