

**IN THE COURT OF APPEAL, FIJI**  
**[On Appeal from the High Court]**

**CRIMINAL APPEAL NO. AAU 059 of 2021**  
**[In the High Court of Suva Case No. HAM 61 of 2021]**

**BETWEEN** : **SANAILA TABUAVULA** *Applicant*

**AND** : **STATE** *Respondent*

**Coram** : Prematilaka, RJA

**Counsel** : Applicant absent and unrepresented  
: Mr. R. Kumar for the Respondent

**Date of Hearing** : 17 June 2022

**Date of Ruling** : 20 June 2022

**RULING**

- [1] This application dated 17 September 2021 for review of the order of refusal of bail pending trial by the High Court on 27 August 2021 in HAC Miscellaneous HAM 61 of 2021 (the substantive case being HAC 24 of 2021) had been preferred in terms of section 30(4) read with section 30(8) of the Bail Act. The applicant with another had been charged with a single count of aggravated robbery under section 311 of the Crimes Act. He seeks an order setting aside the High Court order of refusal of bail and admitting him to bail by this court pending trial.
- [2] In the meantime, the Director of Public Prosecutions acting under section 49 of the Criminal Procedure Act had entered a Nolle Prosequi dated 09 February 2022 in respect of the applicant and his co-accused and the case had been formally discontinued in High Court on 11 February 2022. Consequently, the applicant and his

co-accused had been discharged by the High Court. Thus, the bail review application in this Court has been rendered redundant.

[3] The applicant has not appeared on any of the three occasions the matter was mentioned in this Court and understandably lost interest in pursuing the matter for obvious reasons.

[4] **Vakacereivalu v State** [2014] FJCA 126; AAU09.2011 (25 July 2014) Goundar J sitting as a single judge of the Court of Appeal remarked on a similar situation as follows.

*[1] This is an application for leave to appeal against a decision of the High Court, refusing bail pending trial to the appellant. Whilst this appeal was pending, the appellant was convicted and sentenced to 8 years' imprisonment for robbery with violence by the High Court.*

*[2] Section 35(1) of the Court of Appeal Act gives a single judge power to grant leave to appeal against a bail decision. Section 35(2) gives a single judge power to dismiss a frivolous or vexatious appeal, or an appeal that is bound to fail because there is no right of appeal.*

*[3] Following the appellant's conviction, the issue of bail pending trial is academic. The appellant is no longer in custody on remand. He is now a serving prisoner. In these circumstances, this appeal against refusal of bail by the High Court cannot possibly succeed. The appeal is frivolous.*

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

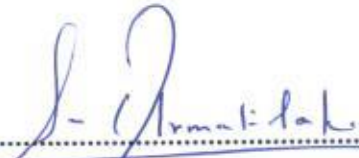
[5] Chalanchini P dismissed the appeal under section 35(2) of the Court of Appeal Act where the appeal under section 21(3) of the Court of Appeal Act against refusal of bail pending trial was pending in the Court of Appeal but the appellant had been tried and convicted in the High Court in **Faiyaz v State** [2019] FJCA 153; AAU51.2018 (19 July 2019). Chalanchini P had dismissed two similar appeals against refusal of bail pending trial in **Raivasi v State** [2018] FJCA 98; AAU0172.2016 (25 June 2018) and **Yunivesi v State** [2018] FJCA 99; AAU0177.2016 (25 June 2018) under section 35(2) of the Court of Appeal Act as during the time the appeal was pending in the Court of Appeal the trial had taken place in the High Court.

[6] In the circumstances, the applicant's application to review bail refusal order has now become not only academic but also untenable in view of his discharge. Therefore, following the previous precedents on section 21(3) of the Court of Appeal this application should be dismissed under section 35(2) of the Court of Appeal Act for having become frivolous and vexatious.

**Order**

1. Application to review the order of refusal of bail pending trial is dismissed under section 35(2) of the Court of Appeal Act.



  
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**Hon. Mr. Justice C. Prematilaka**  
**RESIDENT JUSTICE OF APPEAL**