

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

**CRIMINAL APPEAL NO.AAU 32 of 2020**  
**[In the High Court at Suva Case No. HAC 309 of 2018]**

**BETWEEN** : **SAMUELA ROGOKACI BOKADI**

**Appellant**

**AND** : **STATE**

**Respondent**

**Coram** : **Prematilaka, RJA**

**Counsel** : **Appellant in person**  
**Ms. K. Semisi for the Respondent**

**Date of Hearing** : **19 January 2024**

**Date of Ruling** : **22 January 2024**

**RULING**

[1] The appellant had been convicted in the High Court at Suva on six counts of attempted act with intent to cause grievous harm contrary to section 44 and 255(b) of the Crimes Act 2009 and four counts of resisting arrest contrary to section 277(b) of the Crimes Act 2009. Before the commencement of trial, he had pleaded guilty to a single charge of damaging property (count three) contrary to section 369(1) of the Crimes Act 2009.

[2] The learned High Court judge had sentenced the appellant on 15 May 2020 to a total effective term of 05 years of imprisonment with a non-parole period of 03 years.

- [3] The appellants' appealed only against sentence and a Judge of this court allowed leave to appeal against sentence on two grounds of appeal<sup>1</sup>.
- [4] Thereafter, the appellant has made an application for bail pending appeal.

**Law on bail pending appeal**

- [5] The legal position is that the appellants have the burden of satisfying the appellate court firstly of the existence of matters set out under section 17(3) of the Bail Act namely (a) the likelihood of success in the appeal (b) the likely time before the appeal hearing and (c) the proportion of the original sentence which will have been served by the appellants when the appeal is heard. However, section 17(3) does not preclude the court from taking into account any other matter which it considers to be relevant to the application. Thereafter and in addition the appellants have to demonstrate the existence of exceptional circumstances which is also relevant when considering each of the matters listed in section 17 (3). Exceptional circumstances may include a very high likelihood of success in appeal. However, appellants can even rely only on 'exceptional circumstances' including extremely adverse personal circumstances when he fails to satisfy court of the presence of matters under section 17(3) of the Bail Act [vide **Balaggan v The State** AAU 48 of 2012 (3 December 2012) [2012] FJCA 100, **Zhong v The State** AAU 44 of 2013 (15 July 2014), **Tiritiri v State** [2015] FJCA 95; AAU09.2011 (17 July 2015), **Ratu Jope Seniloli & Ors. v The State** AAU 41 of 2004 (23 August 2004), **Ranigal v State** [2019] FJCA 81; AAU0093.2018 (31 May 2019), **Kumar v State** [2013] FJCA 59; AAU16.2013 (17 June 2013), **Ourai v State** [2012] FJCA 61; AAU36.2007 (1 October 2012), **Simon John Macartney v. The State** Cr. App. No. AAU0103 of 2008, **Talala v State** [2017] FJCA 88; ABU155.2016 (4 July 2017), **Seniloli and Others v The State** AAU 41 of 2004 (23 August 2004)].

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<sup>1</sup> **Bokadi v State** [2022] FJCA 125; AAU32.2020 (27 October 2022)


- [6] Out of the three factors listed under section 17(3) of the Bail Act ‘likelihood of success’ would be considered first and if the appeal has a ‘very high likelihood of success’, then the other two matters in section 17(3) need to be considered, for otherwise they have no direct relevance, practical purpose or result.
- [7] If the appellant cannot reach the higher standard of ‘very high likelihood of success’ for bail pending appeal, the court need not go onto consider the other two factors under section 17(3). However, the court may still see whether the appellant has shown other exceptional circumstances to warrant bail pending appeal independent of the requirement of ‘very high likelihood of success’.
- [8] The appellant submits that he has already served his non-parole period of 03 years (15 May 2023) and earned 1/3 remission of his sentence of 05 years (60 months x 1/3 = 20 months) and therefore should have been released after serving 03 years and 04 months (40 months) by 15 September 2023. However, the Fiji Corrections Services is still keeping the appellant in incarceration.
- [9] This court directed the Legal Aid Commission to look into this matter and advise the Corrections Services. The LAC confirmed to this court that the appellant has in fact earned his full remission and should have been released and accordingly advised Corrections Services which, however, has refused to release the appellant for reasons best known to it contrary to the pronouncements of the Supreme Court in **Kreimanis v State** [2023] FJSC 19; CAV13.2020 (29 June 2023) and **Navuda v State** [2023] FJSC 45; CAV0013.2022 (26 October 2023) that when a prisoner has a non-parole term fixed as part of his sentence the prisoner is to be released (provided that he has been of good behaviour) either after he has served two thirds of his sentence or on the expiry of the non-parole period, whichever is the later.
- [10] The court also directed the Director of Public Prosecutions to look into this grievance of the appellant.
- [11] In the circumstances, I am inclined to treat this as exceptional circumstance warranting the appellant’s release on bail pending the hearing of his appeal.

**Order of the Court:**

1. Bail pending appeal is granted subject to the following conditions:

- (i) The appellant shall reside at Lot 15, Delainavesi Road, Lami, with the two sureties.
- (ii) The appellant shall report to Lami Police Station on last Saturday of every month between 6.00 a.m. and 6.00 p.m.
- (iii) The appellant shall attend the Court of Appeal and all other courts when noticed on a date and time assigned by the registry of the Court of Appeal and registries of other courts.
- (iv) The appellant shall provide in the persons of Alivia Wekanaiwekana (defacto partner –Voter Identification Card No. 2193 851 00818 of Lot 15, Delainavesi Road, Lami and Laisiasa Waqabitu Vakatalesau (brother- Voter Identification Card No. 0130 751 00288 of Lot 15, Delainavesi Road, Lami to stand separately and jointly as sureties.
- (v) The appellant and the sureties shall produce to the CA Registry sufficient proof of their identities, residence addresses and contact details (phone, email etc.).
- (vi) Appellant shall be released on bail pending appeal upon condition (iv) and (v) above being complied with.
- (vi) Appellant shall not reoffend while on bail.



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

**Solicitors:**

Appellant in person  
Office of the Director of Public Prosecution for the Respondent