

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

CRIMINAL APPEAL NO. AAU 050 OF 2024
[Suva High Court: HAC 324 of 2022]

BETWEEN : 1. **PITA SALAUNEUNE** *First Appellant*
2. **ALIVERETI COKANASIGA** *Second Appellant*

AND : **THE STATE** *Respondent*

Coram : Qetaki, RJA

Counsel : Mr. M. Fesaitu for both Appellants
Mr. R. Kumar for the Respondent

Date of Hearing : 28 January, 2026

Date of Ruling : 10 March, 2026

RULING
BAIL PENDING APPEAL

(A). BACKGROUND

[1] This is an application by the appellants for bail pending appeal following a ruling granting the appellants leave to appeal their sentence delivered on 26 August 2025.

[2] At the leave stage, the appellants had urged that the learned sentencing Judge erred in law and in fact by failing to consider the time spent in remand from the date of guilt plea to

date of sentence (10 months 17 days) as time served. The appellants had complained that the correct remand period was not considered by the Sentencing Judge in sentencing when discounting for their time spent in remand. The respondent accepted the appellants' complaint and maintained its calculations for both appellants amounted to 1 year, 10 months and 2 days from the date of arrest (6 September 2022) to sentencing (9 July 2024).

(B). GROUND OF APPEAL

[3] The sole ground of appeal is as follows:

“The Learned Sentencing Judge erred in law and in fact by failing to consider the time spent in remand from date of guilty plea to date of sentence (18 months and 17 days) as time served.”

(C). FACTS

[4] On Tuesday 30 August 2022 at about 10:30 am Maureen Eastgate and her husband Albert Henry Eastgate a.k.a Tiko Eastgate left their home at Vunikoka Farm, Naitasiri and travelled to Suva. They returned to their home at about 3:30pm. Upon reaching their home, they entered via the back door and Maureen noticed that their guitar was on the floor which made her suspect that something was wrong since the same guitar was in their bedroom upstairs.

[5] Maureen proceeded upstairs and noticed that their bedroom door was open which was locked before they went to Suva. In their bedroom she noticed that things were scattered and the cupboards opened, recalling that they had earlier packed in preparation for their upcoming trip to New Zealand. The various items that were stolen had a total value of \$16,050.00.

[6] On 6 September 2022, the appellants were arrested by police, and subsequently interviewed under caution and charged. On the date of offending the 1st appellant was 21 years old, and the 2nd appellant was 18 years 10 months old.

(D) THE LAW

[7] Section 17(3) of the Bail Act 2002 states:

“(3) When a Court is considering the granting of bail to a person who has appealed against conviction or sentence the court must take into account-

- (a) the likelihood of success in the appeal;*
- (b) the likely time before the appeal hearing;*
- (c) the proportion of the original sentence which will have been served by the applicant when the appeal is heard.”*

(E). APPELLANTS’ CASE

[8] Whether bail pending appeal should be granted is a matter of exercise of the Court’s discretion. This application is made in accordance with section 33(2) of the Court of Appeal Act as follows:

“(2) The Court of Appeal may, if it sees fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.”

[9] The Court’s discretion is also to be exercised in accordance with established guidelines from earlier decisions and provisions of the Bail Act 2002.

[10] The appellant bears the burden of satisfying this Court of the existence of the factors set out under section 17(3) of the Bail Act, the factors are: (a) the likelihood of success in the appeal; (b) the likely time before the appeal hearing; (c) the proportion of the original sentence which will have been served by the applicant when the appeal is heard.

[11] Section 17(3) does not preclude the Court from taking into account any other matter which it considers relevant to the application.

[12] Leave to appeal sentence has already been granted to the appellants on 26 August 2025 by the Court of Appeal. From 9 July 2024, the appellants have served approximately 1 year and 4 months. The appellants submit that they have completed their appropriate non-parole period and with one third remission from the Fiji Corrections Department and would complete their remission period by December 2025.

[13] The appellants submit that they have a high likelihood of success.

- [14] Since leave to appeal sentence was granted on 26 August 2025, preparation of copy records is expected to take some time before the matter is ready for hearing before the Full Court, as the older appeals generally take priority.
- [15] Should bail be disallowed, it is likely that the appellants would serve further period in custody than what they are actually required to serve.
- [16] The appellants have deposed that they do not have any other pending criminal matters. Both appellants have provided two suitable sureties to ensure their attendance in Court. The appellants do not pose as flight risks as they do not have any passports or travel documents. There is no evidence that they would be a danger to the community if released on bail pending appeal as they do not have any propensity for offending.
- [17] The appellants have satisfied the requirements for them to be released pending appeal and have also demonstrated that their appeal bears a high likelihood of success.

(F). RESPONDENT'S CASE

- [18] The respondent accepts the appellants' submissions filed by the Legal Aid Commission, and submits that both appellants deserve bail pending appeal. The respondent relies on the approach in bail pending appeal applications observed in **Naikalivou v State** [2024] FJCA 63; AAU017.2022 (26 March 2024) in paragraphs [22] to [24] as follows:

*“[22].....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 rely 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 2002.[vide **Balaggan v The State** AAU48 of 2012 (3 December 2012) [2012]FJCA100; **Zhong v The State** AAU44.2013 (15 July 2014); **Tiritiri v State** [2015]FJCA 95;AAU09.2011(7 July 2015); **Ratu Jope Seniloli & Others v State** AAU41 of 2004 (23 August 2004); **Ranigal v State** [2019] FJCA81;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 State** Cr.App.No.AAU0103 of 2008; **Talala v State** [2017]FJCA*

88;ABU155.2016(4 July 2017), Seniloli and Others v State AAU41 of 2004 (23 August 2004).

[23] 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 not be considered, for otherwise they have no direct relevance, practical purpose or result.

[24] 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”.

Likelihood of success

[19] The respondent states, it is mathematically clear, as submitted by the appellants, that 10 months was mistakenly overlooked to be discounted as time spent in remand, as only 01 year was discounted for the same.

[20] It accepts that both current overall sentences are of 03 years with a non-parole period of 02 years imprisonment (with effect from 09 July 2024), and a further 10 months downward adjustment would likely see both appellants’ sentences being reduced to 02 years and 02 months with a non-parole period of 01 year and 2 months (effective from 09 July 2024).

[21] While it is best not to speculate on the likely outcome of the appeal, it seems that there is a high likelihood of success in the pending appeal.

Likely time before full hearing

[22] The respondent will always refute any appeal delay being attributed to the Court for good reason, however, it is now the duty of the appellant to diligently attend to the appeal record preparation in the usual manner in line with the Court of Appeal Act and its principles developed over the years and now established.

In considering the length of the sentences of both appellants, it would be justified to grant both appellants bail pending appeal so as not to render their meritorious sentence appeals nugatory.

Sentence served

[23] The appellants were sentenced on 09 July 2024, till 23 January 2026, they have served exactly 01 year, 06 months and 14 days. Their respective full remand period of 01 year, 10 months and 02 days, they have collectively remained without liberty for a total of 03 years, 04 months and 16 days. Both appellants have actually served more than their respective 03 years head sentences. The factor is in favour of both appellants, unless the respondent's calculations is erratic.

(G). ANALYSIS

[24] The parties seems to agree that, under the circumstances of this application, the likelihood of success of the pending appeal is high.

[25] The respondent concedes that the full period of remand which ought to be deducted upon sentencing was not deducted, and that the appellants' application for bail pending appeal supported by the Affidavits of the proposed sureties, should be granted.

[26] Having considered the observations made in **Naikalivou v State** (supra) and the well-established principles in cases cited therein (paragraph [22]), the submissions and the relevant laws, I am satisfied that applicants / appellants have, (with the assistance of the respondents), demonstrated an exceptional circumstances prevail, as there is a very high likelihood of success in the appeal against sentence.

[27] The application of bail pending appeal is granted with conditions as in the Order.

Order of Court

1. *Application for bail pending appeal is allowed.*
2. *Each of the applicant is to have one surety.*
3. *Each surety has to sign a Cash bond of \$200.00 (payable).*
4. *The appellants are to report weekly to the Nabua Police Station on Saturdays between the hours of 8am to 6pm weekly.*
5. *The applicants are to refrain from travelling out of the Suva City boundary, without informing the Station Officer, Nabua Police Station before travelling.*




Hon. Justice Alipate Qetaki
RESIDENT JUSTICE OF APPEAL

Solicitors

Legal Aid Commission for the Appellants
Office of the Director of Public Prosecutions for the Respondent