

HIGH COURT OF FIJI

CRIMINAL JURISDICTION

Crim. Misc. Case No. HAM 15 of 2006

Between: RITESH MANARAJ s/o Sharma
Applicant

And: THE STATE
Respondent

Bearing: 27th February 2006
Ruling: 28th February 2006

Counsel: Mr. R. Singh for Applicant
No appearance for State

BAIL RULING

The Applicant applies for bail pending appeal. He was convicted on the 9th of February 2006 of the larceny of waka and lawena to the total value of \$3,309.30. He was sentenced to 12 months imprisonment. He has filed a petition of appeal against sentence, saying that the sentence is harsh and excessive.

The application is made on the ground that the appeal is likely to succeed. Counsel submitted that the Applicant is a 27 year old first offender, who was unrepresented and who was not given any opportunity to mitigate. If he had

Been given such an opportunity, he would have informed the court that he was willing to compensate the victim for the loss of the yagona, and that he was a first offender.

There was no appearance by State counsel, so I had only the defence motion and affidavit before me, at the hearing of the application. I called for the court file and it was dispatched to me expeditiously. There is no presumption in favour of bail, once an offender has been convicted. Bail applications will only succeed if the appeal is clearly meritorious, where the sentence (or a substantial portion of it) will have been served when the appeal is heard or where there are exceptional circumstances.

It is indeed unusual for first offenders to be sent to prison for offences of larceny, unless the offence is one of a breach of trust and qualifies as an offence of fraud. There are of course offences such as robbery with violence, or rape where the seriousness of the offence outweighs the need to give first offenders a second chance. The court record does not indicate that the circumstances of the offending warranted a custodial sentence for a 27 year old first offender. Although the sentence imposed is 12 months imprisonment and will not be substantially served when the appeal is heard, the appeal itself has a very good chance of success. The record shows that mitigation was heard, but it was brief, the Applicant saying he was 27 years old, married with a child and a farmer by profession. However, the summary of facts on the court file does not indicate a breach of trust situation.

Bail is granted pending appeal, on terms to be fixed
in court.




Nazhat Shameem
Judge

At Suva
28th February 2006