

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**MISCELLANEOUS JURISDICTION**

**MISCELLANEOUS CASE NO. HAM 012 of 2013S**

**ANASA TOLOI**

**VS**

**THE STATE**

**Counsels : Mr. T. Muloilagi for Accused**

**Mr. J. Niudamu for State**

**Hearing : 19<sup>th</sup> April, 2013**

**Ruling : 10<sup>th</sup> May, 2013**

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**RULING ON BAIL PENDING TRIAL**

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1. In High Court Criminal Case No. HAC 048 of 2013S, the accused faced the following information:

**FIRST COUNT**

**Statement of Offence**

**UNLAWFUL CULTIVATION OF ILLICIT DRUGS:**

Contrary to Section 5(a) of the Illicit Drugs Control Act  
2004.

**Particulars of Offence**

**ANASA TOLOI** on the 14<sup>th</sup> day of February, 2012, at Muaidule Farm, Kadavu, in the Southern Division, without lawful authority, cultivated 30 plants of cannabis sativa, an illicit drug, weighing a total of 692.2 grams.

## **SECOND COUNT**

### **Statement of Offence**

#### **UNLAWFUL CULTIVATION OF ILLICIT DRUGS:**

Contrary to Section 5(a) of the Illicit Drugs Control Act 2004.

### **Particulars of Offence**

**ANASA TOLOI** on the 14<sup>th</sup> day of February, 2012, at Luvuluvu Farm, Kadavu, in the Southern Division, without lawful authority, cultivated 37 plants of cannabis sativa, an illicit drug, weighing a total of 23.5 kilograms.

2. The accused first appeared in the Suva Magistrate Court on 18<sup>th</sup> February, 2012. The above information was then the charge in the Magistrate Court. He waived his right to counsel and pleaded guilty to the same. The summary of facts was read by the prosecution. He admitted the facts, and was convicted accordingly. He made his plea in mitigation. On 20<sup>th</sup> March, 2012, he was sentenced to 2 years 1 month 11 days imprisonment.
3. The above conviction and sentence were quashed and set aside in High Court Criminal Review Case No. HAM 010 of 2012S. The High Court ordered a re-trial in the High Court, given the Court of Appeal decision in **Kini Sulua, Michael Ashley Chandra v The State**, Criminal Appeal No. AAU 0093 of 2008 and AAU 0074 of 2008. Count no. 2 of the Information was now triable only in the High Court, by virtue of the above Court of Appeal decision.
4. The accused had been in custody since 18<sup>th</sup> February, 2012, that is, 1 year 2 months 21 days ago. He applied for bail in the standard High Court bail application form. He wanted to look after his 5

children, 4 of whom are at school and university. He said, he was the sole breadwinner, and does subsistence farming. He also looks after his parents. He wants to look for a lawyer. The State strongly objected to bail. Both parties have filed written submissions, and I have carefully considered them.

5. It is well settled that, an accused person is entitled to bail pending trial, unless the interest of justice requires otherwise (section 3(1) of the Bail Act 2002). It is also well settled that, the primary consideration in deciding whether to grant bail is the likelihood of the accused person turning up in court to take his trial on the date arranged (section 17(2) of the Bail Act 2002). It is also well settled that, in order for the court to decide the above issue, it is mandatory for it to consider each of the factors mentioned in section 19 of the Bail Act 2002, that is, the likelihood of the accused surrendering to custody, the interest of the accused and the public interest and protection of the community.

**Factor No. 1: The Likelihood of Accused Surrendering to Custody:**

6. The accused is 44 years old, a divorcee with five children, out of whom four are continuing with their education. He also looks after his parents, who are aged over 60 years old. He is a subsistence farmer in his village in Kadavu. He was the sole bread winner. The accused is facing a very serious drug charge. The maximum sentence for both counts is life imprisonment or a fine not exceeding \$1,000,000, or both. Count no. 2 in the information now carries a sentence between 7 to 14 years imprisonment. The prosecution said, their case against the accused was strong. If found guilty, the accused faced a possible sentence of more than 10 years imprisonment. In my view, the accused's chances of bail under this head are slim.

**Factor No. 2: The Interest of the Accused Person:**

7. The accused will be tried later this year, or middle next year. He had been in custody for 1 year 2 months 21 days. However, time spent in custody while on remand will be deducted from his final sentence, if he's found guilty as charged. I understand, he has a counsel and he can visit him in custody to take instructions. A new remand facility is about to be opened, and he can then enjoy new facilities. He is not incapacitated, and it would appear there is no need for him to be at liberty for other lawful purposes. Under this head, in my view, the accused's chances of bail are slim.

**Factor No. 3: The Public Interest and the Protection of the Community:**

8. The allegations against the accused is very serious. It is alleged that he was cultivating marijuana in his farm in Kadavu. The use of drugs in Fiji society is well documented, and causes a lot of health and social problems. The alleged amount found on the accused is one of the biggest that had ever come before the courts. In my view, given the continued menace of illicit drugs in our society, it is in the public interest and the protection of the community that the accused be remanded in custody, at this stage of the proceeding. Under this head, the accused's chances of bail are slim.

**Conclusion:**

9. Given the above, I deny the accused's application for bail. He is remanded in custody, until further orders of the court.

**Salesi Temo**  
**JUDGE**

**Solicitor for Accused** : **Muloilagi and Associates, Suva.**  
**Solicitor for the State** : **Office of the Director of Public Prosecution, Suva.**