

IN THE HIGH COURT OF FIJI
AT LAUTOKA
REVISIONAL JURISDICTION

**CRIMINAL REVIEW CASE NO. HAR 1 OF
2013**

BETWEEN : STATE

AND : AARON ANWAR KHAN

Mr. T. Qalanauci for State

Mr. A. Patel (on instructions from I. Fa) for the Respondent

Date of Hearing : 27 September 2013

Date of Ruling : 27 September 2013

RULING

[1] The accused appeared in the Magistrates Court at Nadi on 2nd September last charged with one offence of common nuisance. To this charge he pleaded not guilty and the matter was adjourned until 13 December 2013 for hearing. The prosecution had no objection to the accused being admitted to bail and the Resident Magistrate then without further enquiry granted him bail on the following terms:

- \$500 bond
- Not to re-offend
- Not to change address without leave of the Court
- To report to Namaka Police Station every Friday between 6.00 am and 4.00 pm;

- A curfew between 6.00 pm and 6.00 am daily;
- Not to leave the jurisdiction.

- [2] These conditions appearing to be particularly serious to a minor offence of common nuisance, the file was called for and pursuant to section 260(2) of the Criminal Procedure Decree, the Chief Justice requests that the orders be reviewed.
- [3] The Court record does not assist in determining whether enquiry was made as to the accused's circumstances, the requirements of the prosecution or indeed even as to what the facts of the case were.
- [4] Mr. Patel tells me that the alleged victim in this case of common nuisance is a Magistrate and that the Magistrate had told the Police to intervene in a dispute between him and the accused resulting eventually in this charge.
- [5] This is not a matter for me on review of the bail terms to discuss or comment on the facts of the case, except where they might have an impact on the bail conditions.
- [6] Mr. Qalanauci submits that the usual bail terms for this offence would be a bail bond and nothing else.
- [7] To impose a curfew as a condition of bail is a strict term usually imposed to keep serial burglars or robbers from the streets at night. There is no evidence that this accused was being a nuisance in his neighbourhood or that he was likely to re-offend in any manner in the night time hours. The imposition of a curfew is inexplicable.
- [8] The accused is a businessman in Fiji. He was born here and holds a Fiji passport. He also holds an Australian passport and has family in Australia whom he visits regularly. He travels often for his business, the business being in construction and in oil refining. He is building accommodation in the Yasawas and is in the process of establishing a petroleum refinery in Fiji. He employs 80 Fijian people and has dealings with Australian and Middle Eastern investors. He needs to meet them regularly, often at working dinners.

- [9] None of these matters were enquired of by the Magistrate.
- [10] For a Magistrate to impose strict conditions on the award of bail without enquiry as to circumstances or means is, as Mr. Patel submits, denial of natural justice.
- [11] Section 23 of the Bail Act stipulates that bail must be granted unconditionally unless the welfare of the community, the welfare of any particular person or the interests of the accused are in jeopardy. There was no evidence before the learned Magistrate nor before me that the community or any person including the accused needed protection. I am sure that the accused will not allow himself to be caught in such a situation again.
- [12] The Magistrate has seriously fallen into error in imposing these conditions for bail. He had no perceptible reason for so doing and as a result the order for bail in the Court below is quashed.
- [13] I make a fresh order for bail in this matter (CR859 OF 2013) as follows.
- [14] Bail is granted in the sum of \$1,000 in the accused's own recognizance (i.e. bail bond). There will be no other conditions. The Director of Immigration will be advised to withdraw the stop order on this accused travelling in and out of the jurisdiction.

Paul K. Madigan
Judge

At Lautoka
27 September 2013

