

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**MISCELLANEOUS JURISDICTION**

CRIMINAL MISCELLANEOUS CASE NO: HAM 279/2013

**BETWEEN** : **FILIPE BABA**  
**APPLICANT**

**AND** : **STATE**  
**RESPONDENT**

**COUNSEL** : **Mr S Valenitabua for the Applicant**  
**Mr A Vavadakua for the Respondent/State**

Hearing Date : 05/05/2014

Ruling Date : 16/05/2013

**RULING ON BAIL PENDING APPEAL**

- [01] Filipe Baba (hereinafter "the applicant") was charged for the offence of Rape contrary to Section 149 and 150 of the Penal Code Cap. 17.
- [02] On 9<sup>th</sup> of September 2013 the Applicant was found guilty and sentenced on 26<sup>th</sup> September 2013 for a period of 08 years imprisonment with non – parole period of 07 years.
- [03] The Applicant lodged his Petition of Appeal against both conviction and the sentence imposed by the learned Magistrate.
- [04] Applicant filing this application submits that there is a high likelihood of success in the appeal based on the ground which he has urged.
- [05] He also urges that the likely time before hearing date is set; and


- [06] The proportion of the original sentence which will have been served by the Applicant when the appeal is heard.
- [07] Bail Pending Appeal is governed under Section 17(3) of the Bail Act 2002. According to Section 17(3) of the Bail Act;
- (3) When a court is considering the granting of bail to a person who has appealed against conviction and sentence court must take into consideration-
    - (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.
- [08] The presumption in favour of the granting bail is displaced where the person has been convicted and has appealed against conviction. The Applicant therefore has to prove the existence of exceptional circumstances or any consideration under Section 17(3) of the Bail Act.
- [09] In Qurai v The State (unreported AAU 36 of 2007; 1 October 2012) it was stated that:
- “I consider that the long standing requirement that bail pending appeal will only be granted in exceptional circumstances is the reason why the chances of the appeal succeeding under Section 17(3) has been interpreted by the Courts as to mean a very high likelihood of success”*
- [10] In James Praneel Singh v State Misc. Ac. No. HAM 25/04, Madam Shameem J, stated at Paragraph 3:
- “The principles relevant to this application are whether a substantial portion of the sentence will have been served at the time of the appeal is heard, the merit of the appeal and any exceptional grounds justifying bail. There is no right to bail pending appeal”*

- [11] In Senitiki Naga & Others v State Cr. Misc. Ac. No. HAM 23/04 at p.6 paragraph, per Justice Winter:

*"I remind myself that this is a bail application pending appeal and that any assessment on the likelihood of success of the appeal is just exactly that an assessment of likelihood not a prediction or judgement. This must be a test with a low threshold. In these bail applications the appeal case is not to be scrutinized but assessed on its likely outcome"*

- [12] The appeal hearing will be set very soon. The Applicant filed 06 grounds of Appeal. Considering the evidence adduced during the trial there is no highly likelihood of success in the appeal. But all grounds of appeal will be heard during the appeal argument.
- [13] The total sentence he has to serve as per the judgment is 07 years. If the appeal is fairly heard soon the Applicant would not have served a substantial part of the entire sentence.
- [14] Considering the above factors the Applicant's Bail Pending Appeal Application has no exceptional grounds to grant bail in this case.
- [15] Bail refused.
- [16] You have 30 days to appeal.



  
P Kumararatnam  
**JUDGE**

At Suva  
16/05/2014