IN THE HIGH COURT OF FIJI

AT LAUTOKA

MISCELLANEOUS JURISDICTION

HAM NO. 148 OF 2016

BETWEEN	:	**RONIL RAVINESH**
		Applicant
AND	:	**STATE**
		Respondent
Counsel	:	**Mr. Iqbal Khan for the Applicant**
		Ms. Shelyn Kiran for Respondent
Date of Ruling	:	**16th of September 2016**

RULING ON BAIL REVIEW

1. The Appellant files this Notice of Motion seeking an order for which the Appellant be admitted on bail pending his appeal. The Notice of Motion is being supported by an affidavit of the Appellant, stating the grounds for this application.

2. The Appellant had been charged in the Magistrates's court of Lautoka with one count of Assault Causing Actual Bodily Harm, contrary to Section 275 of the Crimes Decree and one count of Breach of Suspended Sentence, contrary to

Section 28 (1) (2) of the Sentencing and Penalties Decree. The Appellant was produced before the Magistrates court on the 13th of July 2016, where he pleaded guilty for both of the counts as charged. The learned Magistrate then sentenced the Appellant for five month imprisonment period for the first count and ten months of imprisonment period for the second count on the 15th of August 2016. Being aggrieved with the said sentence, the Appellant filed an appeal against the said sentence on the following grounds inter alia;

i) *That the Appellant appeal against Sentence being manifestly harsh and excessive and wrong in principle in all the circumstances of the case,*

ii) *That the learned Trial Magistrate erred in law and in fact in taking irrelevant matters into consideration when sentencing the Appellant and not taking into relevant consideration in particular that the complaint had reconciled,*

iii) *That the learned Trail Magistrate erred in law and in fact in passing sentence of imprisonment for 10 months was disproportionately severe punishment contrary to Section 25 of the Constitution of Fiji (1998) (Section 11 (1) of the 2013 Constitution of Fiji),*

iv) *That the learned Trial Magistrate erred in law and in fact in not taking into consideration that provisions of the Sentencing and Penalties Decree 2009 adequately when he passed the sentence against the Appellant,*

v) *That the learned Trial Magistrate erred in law and in fact activating the suspended sentence when not taking into consideration to the fact that the subsequent offence was in a completely different category from that for which the original suspended*

sentence was imposed and therefore rendering it unjust to make the original suspended sentence operative,

3. Having briefly considered the background of this application, I now turn on to discuss the applicable law pertaining to an application of this nature.

4. According to Section 3 (4) (b) of the Bail Act the presumption in favour of bail is displaced in respect of a person who has been convicted and has appealed against the said conviction.

5. Justice Suresh Chandra JA in **Arora v State [2012] FJCA 67; AAU001.2012 (16 October 2012)** has discussed the applicable approach in granting bail pending appeal, where his lordship found that;

The position regarding bail regarding a person charged for a crime and awaiting trial and one who has been convicted after triai was succinctly set out by his Lordship Sir Moti Tikaram in Amina Koya v State Cr App. No.AAU))11/96 as follows:

"I have borne in mind the fundamental difference between a bail applicant waiting Trial and one who has been convicted and sentenced to jail by a court of competent jurisdiction. In the former the applicant is innocent in the eyes of the law until proven guilty. In respect of the latter he or she remains guilty until such time as a higher court overturns, if at all, the conviction. It therefore follows that a convicted person carries a higher burden of satisfying the court that the interests of justice require that bail be granted pending appeal."

His Lordship Justice Ward in Ratu Jope Seniloi, Ratu Rakuita Vakalalabure, Ratu Viliame Volavola, Peceli Rinakam and Viliame Savu v The State (Crim. App. No.AAU0041/04S. High Court Cr App No.0028/003,23 August 2004) said:

"It has been a rule of practice for many years that where an accused person has been tried, convicted of an offence and sentenced to a term of imprisonment, only in exceptional circumstances will be released on bail during the pendency of an appeal. This is still the rule in Fiji. The mere fact an appeal is brought can never itself be such an exceptional circumstance." (Emphasis mine)

Scutt JA in Matai v The State (2008) FJCA 89 AAU0038.2008 has set out in detail the manner in which applications for bail pending appeal have been dealt within common law jurisdictions which all deal with the high threshold that has to be met with by an Appellant seeking bail pending appeal .

It has been clearly laid down in a series of cases that bail pending appeal will be granted only rarely and that too where there are exceptional circumstances. Therefore the threshold is very high when applications for bail pending appeal are taken up for consideration by Court.

6. Section 17 (3) of the Bail Act has stipulated the main consideration that the court is required to take into account in granting bail pending appeal to a person who has been convicted and sentenced. Section 17 (3) of the Bail Act states that;

"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-

i) the likelihood of success in the appeal;

ii) the likely time before the appeal hearing;

iii) the proportion of the original sentence which will have been served by the applicant when the appeal is heard.

7. Justice Ward in **Ratu Jope Seniloli, and others v The State (Crim. App. No.AAU0041/04S. High Court Cr App No.0028/003,23 August 2004)** has outlined the scope of the Section 17 (3) of the Bail Act, where his lordship held that;

"It is clear that the terms of subsection (3) make it mandatory for a court, when considering bail pending appeal, to take into account those three matters but I cannot accept it excludes the court from taking into account any other factors it considers properly relevant"

The general restriction on granting bail pending appeal as established by cases in Fiji and many other common law jurisdictions is that it may only be granted where there are exceptional circumstances"

8. Justice Ward in **Ratu Jope Seniloli (Supra)** went further and expounded an appropriate approach for Section 17 (3) of the Bail Act, where his lordship held that;

"The two remaining matters set out in Section 17(3) are only directly relevant if the court accepts there is a real likelihood of success. If the court does not, their determination becomes otiose"

9. I now draw my attention to the ground of likelihood of success in the appeal.

10. The scope of the ground of likelihood of success in the appeal has been discussed in **Ratu Jope Seniloli (supra)** in an elaborative manner, where Ward JA found that;

"The likelihood of success had always been a factor the court has considered in application for bail pending appeal and Section 17 (3) now enacts that requirement. However, it gives no indication that there has been any change in the manner in which the court determines the question and the courts in Fiji have long required a very high likelihood of success. It is not sufficient that the appeal raises arguable points............

In Sharda Nand v DPP, FCA Application 3 of 1979, Marsack JA repeated the warning that the court should not, on such an application, give any ruling on the legal issues raised and then stated

"All that is necessary .....is to decide whether (the issues) show, on the face of it, that the appeal has every chance of success"

11. Justice Gounder JA in **Dakuidreketi v Fiji Independent Commission Against Corruption [2016] FJCA 48; AAU0099.2014 (21 March 2016)** held that;

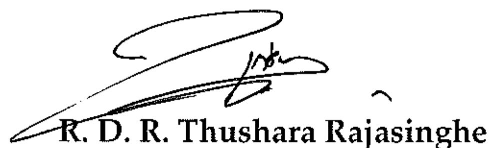
"The threshold for the likelihood of success is very high. Bail is granted only if the appeal has a very high likelihood of success"

12. Having considered the grounds of appeal advanced by the Appellant, I find that they are mainly founded on two main contentions; The first is the excessive and harsh nature of the sentence. The second contention is that the second count has derived from a separate incident, hence the restoration of the suspended sentence is wrong and unjust.

13. The learned Magistrate has given his reasons in the sentence for the restoration of the suspended sentence. He has considered the tariff limit for the offence of Assault Causing Actual Bodily Harm. These issues are arguable and could be considered during the course of the hearing of the appeal. Hence, I do not find any reasons to consider that there is very high likelihood of success of this appeal.

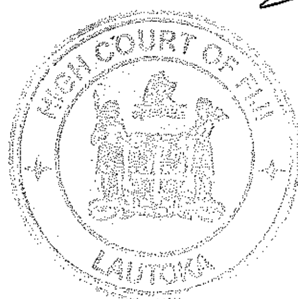
14. In view of these grounds of appeal, I do not find that there is a high likelihood of success as stipulated in above discussed judicial precedents, though they are arguable grounds.

15. In conclusion, I refuse this application and dismiss it accordingly.



R. D. R. Thushara Rajasinghe

Judge



At Lautoka

16th of September 2016

Solicitors : Iqbal Khan& Associates

Office of the Director of Public Prosecutions