

IN THE HIGH COURT OF FIJI AT SUVA

In the matter of an application for bail
pending appeal.

RAJENDRA NARAYAN

Applicant

CASE NO: HAM. 165 of 2017
(HAA 39/2017)

Vs.

STATE

Respondent

Counsel : Mr. Liverpool for Applicant
Mr. T. Tuenuku for Respondent

Date of Hearing : 13th November 2017

Date of Ruling : 22nd November 2017

BAIL RULING

1. This is an application for bail pending appeal. The applicant had been convicted of the offence of giving false information to a police officer contrary to section 201(1)(a) of the Crimes Act 2009 on 26/09/17 and had been sentenced on the same day to 18months and 2 weeks imprisonment.
2. In terms of section 3(4) the presumption in favour of the granting of bail is displaced where the person has been convicted and has appealed against the conviction.

3. Section 17(3) of the Bail Act provides thus;

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-

- (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.

4. The relevant appeal has already been fixed for hearing on 16/01/18 by which date the applicant would have served close to 4 months of his 18months and 2 weeks sentence.

5. Therefore, the second and third factors above are not in favour of the applicant as far as this application is concerned and the only ground based on which the applicant may have a chance to be successful in this application is on the likelihood of success in the appeal.

6. In *Reddy v State* [2015] FJCA 48; AAU6.2014 (13 March 2015), Calanchini P. explained the scope of Section 17(3) of the Bail Act as follows;

Although Section 17 (3) imposes an obligation on the Court to take into account the three matters listed, the Section does not preclude a Court from taking into account any other matter which it considers to be relevant to the application. It has been well established by cases decided in Fiji that bail pending appeal should only be granted where there are exceptional circumstances.

In Apisai Vuniyayawa Tora & Others -V- R (1978) 24 FLR 28, the Court of Appeal emphasized the overriding importance of the exceptional circumstances requirement:

"It has been a rule of practice for many years that where an accused person has been tried and convicted of an offence and sentenced to a term of imprisonment, only in exceptional circumstances will he be released on bail during the pending of an appeal."

The requirement that an applicant establish exceptional circumstances is significant in

two ways. First, exceptional circumstances may be viewed as a matter to be considered in addition to the three factors listed in Section 17 (3) of the Bail Act. Thus, even if an applicant does not bring his application within Section 17 (3), there may be exceptional circumstances which may be sufficient to justify a grant of bail pending appeal. Secondly, exceptional circumstances should be viewed as a factor for the Court to consider when determining the chances of success.

This second aspect of exceptional circumstances was discussed by Ward P in Ratu Jope Seniloli & Others -V- The State (Unreported Criminal Appeal No. 41 of 2004 delivered on 23rd August 2004) at page 4:


"The likelihood of success has always been a factor the Court has considered in applications 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 and it is not for the single Judge on an application for bail pending appeal to delve into the actual merits of the appeal. That as was pointed out in Koya's case (Koya -V- The State unreported AAU 11 of 1996 by Tikaram P) is the function of the full Court after hearing full argument and with the advantage of having the trial record before it."

It follows 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" factor in Section 17 (3) has been interpreted by this Court to mean a very high likelihood of success.

7. Therefore, the applicant in this case must establish that there is a very high likelihood of success in his appeal. Needless to say, in order to convince the court in this regard the applicant should provide extensive submissions with all relevant material.
8. The issue raised on the first ground of appeal which is against the conviction concerns the assessment of the evidence. The written submissions on this ground of appeal do not sufficiently demonstrate that this ground has a very high likelihood of success.

9. The second and third grounds of appeal are grounds against the sentence. It is well established that in order to disturb a sentence imposed by a lower court in appeal, the appellant should demonstrate that the Learned Magistrate in arriving at the sentence had;
- a) acted upon a wrong principle;
 - b) allowed extraneous or irrelevant matters to guide or affect him;
 - c) mistook the facts; or
 - d) did not take into account some relevant consideration.
10. On the second ground the complaint is that the Learned Magistrate did not consider the factors outlined by the applicant in mitigation and on the third ground that the sentence is harsh and excessive. The offence the applicant is convicted of carries a maximum sentence of 5 years and according to the applicant he is sentenced to an imprisonment term of 18 months and 2 weeks. The applicant has not clearly demonstrated that the Learned Magistrate had erred in sentencing the applicant and that error falls within the scope of any of the grounds outlined above.
11. All in all, the submissions made on behalf of the applicant on the grounds of appeal do not sufficiently demonstrate that he has a very high likelihood of success in his appeal.
12. In the circumstances, this application is refused.




Vinsent S. Perera
JUDGE

Solicitors for the Applicant : Reddy & Nandan, Barristers & Solicitors, Suva.
Solicitors for the Respondent : Office of the Director of Public Prosecutions, Suva.