

IN THE HIGH COURT OF FIJI AT SUVA

In the matter of an application for bail
pending trial.

RIZWAN ALI

Applicant

**CASE NO: HAM. 130 of 2018
[HAC 203/2018]**

Vs.

STATE

Respondent

Counsel : Ms. N. Mishra for Applicant
Ms. S. Tivao for Respondent

Hearing on : 30th July 2018

Ruling on : 20th August 2018

BAIL RULING

1. This is an application for bail pending trial. The applicant is charged with one count of aggravated burglary and one count of theft contrary to section 313(1)(a) and section 291 of the Crimes Act respectively. Aggravated burglary is an offence punishable with an imprisonment term of 20 years and theft 10 years. It is alleged that the applicant committed the offences with another.
2. The respondent objects to bail stating *inter alia* that;
 - a) The applicant is charged with a serious offence;

- b) There is a strong case against the applicant;
- c) The applicant has a previous conviction for the offence of theft and he has claimed that he has no previous convictions in his bail application;
- d) The applicant has a pending case before the magistrate court where he is charged for theft; and
- e) It is not in the public interest to grant bail to the applicant.

3. According to the previous conviction report filed by the respondent, the applicant had been convicted for theft in 2014. According to the copy of the charge statement submitted by the respondent, the date of the offence in the case pending before the magistrate court is 08/09/17. As far as the issue of bail is concerned I have sufficient reasons to conclude on a balance of probability that the applicant is likely to commit arrestable offences if he is granted bail. Further, I find that the applicant had breached a previous bail undertaking. Therefore, the presumption in favour of the applicant for the granting of bail is displaced in this case pursuant the provisions of section 3(4) of the Bail Act 2002 ("Bail Act").

4. Section 3 of the Bail Act states as follows;

3.- (1) *Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted.*

(2) *Bail may be granted by a court or, subject to section 8(2), by a police officer.*

(3) *There is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption.*

(4) *The presumption in favour of the granting of bail is displaced where-*

(a) *the person seeking bail has previously breached a bail undertaking or bail condition;*

(b) *the person has been convicted and has appealed against the conviction;*
or

(c) *the person has been charged with a domestic violence offence.*

5. In addition to asserting that he has no previous convictions in the supplementary affidavit filed by the applicant, in the initial bail application he had filed in person the applicant had left the question regarding pending cases blank. However, he had mentioned about the pending case in his supplementary affidavit. As I have said in a previous case, a person is enlarged on bail by a court on trust, upon relying on the undertaking made by that person that he/she will not abscond and will be present in court on all the dates as directed by the court including the trial. Therefore, it is necessary for the person seeking bail to disclose all relevant material within his/her knowledge that is relevant to the determination on whether or not to grant bail. I have reasons to conclude that the applicant in this case had attempted to withhold relevant information apart from giving incorrect information regarding his previous convictions.

6. Section 19(1) of the Bail Act reads thus;

An accused person must be granted bail unless in the opinion of the police officer or the court, as the case may be-

(a) the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;

(b) the interests of the accused person will not be served through the granting of bail; or

(c) granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.

7. The applicant had come before this court at a time where the offences against property are prevalent in the country. Given the fact that the applicant had allegedly committed this offence whilst he was on bail for another matter and the fact that the applicant had not been forthright in providing correct information in his bail application, I am inclined to form the opinion that the applicant is a flight risk and further, granting bail to the applicant would endanger the public interest and make the protection of the community more difficult.

8. In the circumstances, I would refuse this application.



Vinsent S. Perera

JUDGE

Solicitors;

Legal Aid Commission for the Applicant.
Office of the Director of Public Prosecutions for State.