

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**[CRIMINAL JURISDICTION]**

**Criminal Miscellaneous Case No. HAM 053 of 2019**  
**Criminal Case Number HAC 063 of 2019**

**BETWEEN** : JOSUA AZIZ RAHMAN

**AND** : STATE

**Counsel** : Mr A Nadan for the Accused  
Mr A Jack & Mr S Shah for the State

**Dates of Hearing** : 20 March 2019

**Date of Ruling** : 28 March 2019

**RULING**

- [1] The Accused seeks bail pending trial. He is charged with possession of an illicit drug. It is alleged that he was found in possession of 39.5kg of cocaine with an estimated street value of approximately \$30 million.
- [2] The State objects to the granting of bail saying that the likelihood of the Accused absconding is real and that the public interest and the protection of the community will be undermined if the Accused is released on bail.
- [3] The discretion to grant or refuse bail is of the court. The principles are governed by the common law and the Bail Act. There are two overarching principles. The first is the entitlement to bail provided by section 3(1) of the Bail Act. This entitlement is based on the presumption that an accused is innocent until proven guilty by the prosecution. The presumption of innocence is protected by the Constitution. However, that entitlement will fail if it is not in the interests of justice that bail should be granted.

- [4] The second is the presumption in favour of the granting of bail provided by section 3(3) of the Bail Act. That presumption is rebuttable if it can be shown that the Accused has previously breached a bail undertaking or bail condition, or been convicted and has appealed against the conviction. There is no evidence that the Accused has previously breached a bail undertaking or condition. The presumption in favour of the granting of bail is intact.
- [5] I now consider whether it is not in the interests of justice that the Accused should be granted bail. When considering the interests of justice, the primary consideration is whether the Accused will appear for his trial (s17(2) and s19(1)(a)). Other considerations are whether the interests of the Accused will not be served through the granting of bail (s 19(1)(b)), or granting bail would endanger the public interest or make the protection of the community more difficult (s 19(1)(c)).
- [6] The Accused is 24 years old and a Canadian National. He has his roots here in Fiji. His parents are separated. His father lives in Fiji. He lives in Canada with his mother and other siblings. According to the Accused he frequently visits his father in Fiji for vacations. He says he is a business consultant and before his arrest he was exploring options to invest in Fiji. He has not disclosed the true nature of his business.
- [7] The alleged illicit drug was found inside a house in Caubati. It is not clear who the owner is but the house was rented by the Accused's father. When the seizure was made, the father was in New Zealand and the Accused was occupying the house. The court has been informed that the alleged drug was concealed and hidden inside a bedroom. Apart from a caretaker, the Accused was the only other person having access to the house. The seizure was made under a search warrant in the presence of the Accused. He was arrested and interviewed under caution. He denied knowledge of the existence of the illicit drug inside the house.
- [8] It appears that the litigation issue will be whether the Accused was in possession of the alleged illicit drug. The Accused's case is that the house was not under his control and therefore he was not in possession. The prosecution case is that at the material

time the house was under control of the Accused and therefore he is presumed to be in possession.

- [9] The prosecution further submits that the Accused's arrest occurred in the context of a number of other arrests in New Zealand. The prosecution says that the Accused has associates in a number of countries and travels to Canada, Mexico and New Zealand. The prosecution submits that prior to his arrest he in fact made arrangements to leave Fiji.
- [10] The Accused says the arrangements to leave Fiji were made prior to the arrest when he had no knowledge that he would be arrested and charged with an offence. He offers to post cash bail and two sureties and abide by all the conditions of bail. Currently, he is finding it difficult to adjust to the remand conditions due to the cultural difference between Fiji and Canada where he was born and raised. He says he is responsible for looking after his mother who resides alone in Canada.
- [11] All things considered, on the material before me it seems that the prosecution has a strong potential case against the Accused. The charge is significantly serious. The maximum penalty available for the offence of possession of an illicit drug is life imprisonment. As a foreigner his community ties in Fiji are not strong. He is not sort of funds as he has offered to post \$10,000 cash bail. In these circumstances the temptation not to answer to his bail would be nothing short of overwhelming. For these reasons, it is not in the interests of justice to grant bail.
- [12] Since bail has been refused, the case will be given a priority trial date. Every effort will be made not to keep the Accused in custody on remand for more than 12 months before trial.



A handwritten signature in blue ink, appearing to be "D. Goundar", written over a horizontal dotted line.

**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Neel Shivam Lawyers for the Accused  
Office of the Director of Public Prosecutions for the State