

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

Criminal Miscellaneous Case No. HAM 360 of 2018
[Magistrates' Court Criminal Case No 985, 988, 989/18 & 954, 898/16 & 965/15]

BETWEEN : VILIMAINA DELANA

AND : STATE

Counsel : Applicant in person
Mr R Kumar for the State

Date of Hearing : 4 February 2019
Date of Ruling : 18 February 2019

RULING

[1] This is an application for a review of a decision refusing to review a bail condition by the Magistrates' Court. The applicant is facing numerous charges of obtaining property by deception in the Magistrates' Court. She absconded bail in a number of cases and was at large for a long period of time. Subsequently, she was apprehended and charged with further similar offences. She allegedly committed fresh offences while at large. She was further charged with absconding bail. Despite having previously absconded bail, the Magistrates' Court granted the applicant conditional bail as follows:

1. The accused is granted cash bail varied in the sum of \$2000.00. The bail amount is to be deposited in to the Registry by close of business as at the date of this ruling.

2. The accused is to surrender the passport and all travel documents to Court and is prohibited from obtaining any travel documents. A Stop Departure order is issued against the accused.
3. The accused is to report to Valelevu Police Station every Monday, Wednesday and Saturday between 8am and 6pm.
4. Accused is to reside at Stage 2 Caubati and is not permitted to change residential address without the permission of this Court.
5. Accused is to provide two suitable sureties to Court to be bonded in the sum of \$2000 each and must reside with one surety and is not to change her residential address without the permission of this Court.
6. Accused is not to reoffend whilst on bail and not to interfere with Prosecution witnesses.
7. The Accused is warned that any breach of these conditions is likely to result in cancellation of the bail and prosecution for an offence.

[2] After the applicant was unable to post cash bail, she applied to vary her bail conditions by dispensing with the requirement to post cash bail.

[3] Section 30(3) of the Bail Act states that the High Court may review any decision made by a magistrate or by a police officer in relation to bail. The power to review is restricted to any decision in relation to bail. The applicant seeks a review of the learned magistrate's decision refusing to vary her bail conditions.

[4] In *Masirewa v State* [2017] FJHC 956; HAM178.2017 (29 December 2017), this Court said that the review procedure under the Bail Act is only available where, for one reason or another, the appeal procedure cannot be resorted to. The applicant clearly had a right of appeal against the learned magistrate's decision refusing to vary her bail conditions. Section 31(1) of the Bail Act that gave that right states that all grants or refusals of bail and all orders, conditions or limitations made or imposed

under this Act are appealable to the High Court upon the application either of the person granted or refused bail or of the Director of Public Prosecutions. The appeal jurisdiction is more specific. Bail conditions or limitations are appealable to the High Court. Review jurisdiction on the other hand is restricted to any decision in relation to bail. It could be argued that the review jurisdiction is restricted to any decision pertaining to grant or refusal of bail and that bail conditions or limitations imposed in granting bail are not amenable for a review under the Bail Act.

[5] In any event, the applicant has not satisfied why she could not resort to the appeal procedure before seeking a review. The application for a review is misconceived. I would further add that the applicant is fortunate that the learned magistrate granted her bail given her appalling track record of absconding bail and not appearing in court to answer the charges laid against her. This Court would not have granted bail to an accused with such a history.

[6] The application is refused.



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

Hon. Mr Justice Daniel Goundar

Solicitors:

Applicant in person
The Office of the Director of Public Prosecutions for the State