

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

**Criminal Misc. Application No HAM 157 of 2022**  
**Criminal Case No. HAC 256 of 2021**

**BETWEEN** : **ANASA RAMASAU**

**AND** : **THE STATE**

**Appearances** : Applicant in person  
: Mr. Zunaid, Z for the State

**Date of Hearing** : 30 June 2022

**Date of Ruling** : 20 July 2022

**RULING**

1. The Applicant is charged with a count of aggravated robbery contrary to section 311 (1) (a) of the Crimes Act of 2009. The aggravation alleged is committing robbery with another. The information alleges that he and his co-accused stole a cash register, 2 x gross BH 10, 2 x 750ml bottles of rum, a Samsung A12 mobile phone and \$2744.55 cash from the Complainant and at the time of the theft, used force on the Complainant.
2. A trial date has been set from 20 – 24 March 2023.
3. This is his second application for bail. The first was refused on 6 May 2022 on the grounds firstly, that he was unlikely to surrender to custody, and secondly, that releasing him on bail would make the protection of the community more difficult.

4. He has been in custody since 9 November 2021.
5. He tells me he has provided grounds which show a material change in circumstances and pleads to be released on bail pending trial.

#### Legal principles

6. There can be no doubt that the Bail Act (the Act) permits the making of any number of bail applications. Thus section 14 (1) provides:

Subject to subsection (3), an accused person may make any number of applications to a court for bail.

7. This provision is subject to section 14 (3) which states that a court may refuse to entertain an application for bail if satisfied that the application is frivolous or vexatious.
8. Section 30 of the Act deals with the power of review and appeal of bail decisions. Subsection (3) of this section states that a court with power to review a bail determination or to hear a fresh application under section 14 (1) may refuse to hear the review or application if not satisfied that there are special facts or circumstances that justify a review or the making of a fresh application.
9. In *Reddy v State* [2016] FJHC 439; HAM62.2016 (20 May 2016), the Court cited *Regina v Nottingham Justices, Ex Parte Davies* (1980) 2 All ER 775 where Donaldson LJ stated the principles applicable to subsequent applications for bail as follows:

However, this does not mean that the justices should ignore their own previous decision or a previous decision of their colleagues. Far from it. On those previous occasions, the court will have been under an obligation to grant bail unless it was satisfied that a schedule 1 exception was made out. If it was so satisfied, it will have recorded the exceptions which in its judgment were applicable. This "satisfaction" is not a personal intellectual conclusion by each justice. It is a finding by the court that schedule 1 circumstance then existed and is to be treated like every other findings of the court. It is res judicata or analogous thereto. It stands as a finding unless and until it is overturned on appeal. An Appeal is not to the same court, whether or not of the same constitution, on a later occasion.....

10. On whether there has been a material change in circumstances, the Court in Davies (supra) stated:

The starting point must always be the finding of the position when the matter was last considered by the court. I would inject only one qualification to the general rule that justices can and should only investigate whether the situation has changed since the last remanded in custody. The finding on that occasion that schedule 1 circumstances existed will have been based upon matters known to the court at that time. The court considering afresh the question of bail is both entitled and bound to take account not only of a change in circumstances which has occurred since that last occasion, but also of circumstances which, although they then existed, were not brought to the attention of the court. To do so is not to impugn the previous decision of the court and is necessary in justice to the accused. The question is a little wider than "has there been a change?" It is "Are there any new considerations which were not before the court when the accused was last remanded in custody?"

11. I decide this fresh application with the above provisions and principles in mind. I note that the Applicant must demonstrate a material change in circumstances since the last determination of bail.
12. In his first application, the Applicant had sought bail to help his elderly parents on the farm.
13. He brings additional grounds this time. He says he has no previous convictions for absconding bail, escaping from lawful custody and breaching bail conditions. He has no pending cases before any other Court. He says he will challenge the admissions in his cautioned interview statement as these were obtained by force and under duress. His medical report supports the allegations against the Police in a *voir dire*. He says if the State is unable to prove the allegations against him beyond reasonable doubt, there is no breach of suspended sentence. He is a commercial farmer by profession and his business generates income for his family obligations. He says he has two suitable sureties to guarantee his appearance in Court. He proposes his parents for this role.

14. The length of time in custody has deprived him of a source of income and loss of produce in his farm. He says a failure of the State to prove the charge beyond reasonable doubt will put the State at risk of the losses resulting from his being in custody.
15. He has an alibi and has been wrongly charged as he was somewhere else during the alleged offence.


Has the Applicant shown a material change in circumstances?

16. The question as to the existence of previous convictions, of a history of absconding or breach of bail of conditions was considered in the last bail application. There was no adverse record then of any of these against the Applicant. However, the Court found that notwithstanding there being no such record, there were other considerations against granting bail.
17. One of these was the seriousness of the charge and the possible consequences in the event of a conviction. The charge the Applicant faces is one of aggravated robbery, the maximum penalty for which is 20 years imprisonment. The allegation is robbery of a store with and in the company of another. If convicted, the chances of a lengthy imprisonment sentence are high.
18. The Accused and his accomplice were not masked and were recognised at the shop by an eye witness who knows them.
19. The strength of the prosecution case and the likelihood of a lengthy imprisonment sentence upon conviction make it unlikely that the Accused will turn up for trial if released on bail.
20. In his last application, the Applicant had said he wanted to go help his elderly parents on the farm. He said nothing then about being a commercial farmer or of the need to look after this so called business. He could not have possibly forgotten or overlooked then this very important ground he now urges for the first time. Add to this the absence of any evidence as to the nature of this commercial farm apart from the bald assertion, I am not

satisfied this is a material change of circumstance. In any event, arrangements may be made in respect of his farm while he is in remand.

21. The Applicant says he is relying on the defence of alibi. He says his confessions in his cautioned interview statement were obtained by force and under duress. He says he has a medical report to support his allegations of misconduct against the Police.
22. The State has indicated that it will not rely on the cautioned interview statement of the Applicant at the trial of this matter. Additionally, the Applicant's counsel has indicated at pre-trial conference that the Applicant is not relying on the defence of alibi.
23. The alleged offence was committed whilst the Applicant was serving two suspended sentences for aggravated robbery in one case, and for aggravated burglary and theft in another. They are serious property related offences of the same and similar nature as the charge he faces in this case. The bringing of this charge therefore during the operational period of two suspended sentences are an indication that enlarging him on bail would endanger the public interest or make the protection of the public more difficult.
24. For all of these reasons, and notwithstanding that the Applicant has urged a few new grounds on this application, I do not consider that any material change of circumstances exists to warrant a grant of bail on this application which is accordingly refused.



  
Siainiu F. Bull  
**Acting Puisne Judge**

**Solicitors:**

Applicant in person

Office of the Director of Public Prosecutions for the Respondent