

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

**MISCELLANEOUS CASE NO. HAM 44 OF 023**

**JOSAIA KURIWACA RABA**

**vs.**

**STATE**

**Counsels:**

<i>In person</i>	-	<i>for Applicant</i>
<i>Ms. Ali N.</i>	-	<i>for State</i>

**Bail Rulling**

1. The Applicant charged with one count of **Aggravated Burglary** contrary to **Section 313 (1) (a)** of the **Crimes Act of 2009**, one count of **Theft** contrary to **Section 291 (1)** of the **Crimes Act of 2009** and with one count of Failure to comply with orders contrary to **Section 69 (3) (v)** of the **Public Health Act of 1935** read with **Regulation 2** of the **Public Health (Infectious Diseases) Regulation of 2020**, has filed this application seeking **bail**. This is the applicant's second **bail** application, since he was arrested and remanded on the 24<sup>th</sup> of December 2021.
2. The State has filed its response to this bail application, objecting to bail, supported by the affidavit of **PC 6268 SEMI MASI LOMANI**, the investigations officer to the offence alleged by the prosecution.
3. Submissions in support of bail on behalf of the Applicant;
  - i) Pursuant **Section 3(1)** of the **Bail Act of 2002**, every person charged with an offence has a right to be released on bail, unless it is not in the interest of justice. **Section 3 (3)** states that there is a presumption in favor of granting of bail.
  - ii) Pursuant to **Section 13** of the **Constitution of Fiji**, every person charged with an offence has a right to be released on bail, unless it is not in the interest of justice. Further, under **Section 14 (2) (a)** of the Constitution of Fiji, every person charged with an offence has a right to be presumed innocent until proven guilty according to law.

- iii) Further, the Applicant has highlighted the provisions of **Section 17 (2)** of the **Bail Act**, where it is stated that the primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in Court to answer the charges laid against him or her.
4. Submissions of the State in opposition to bail;
- i) In the affidavit tendered by **PC 6268 Semi Masi Loman** in opposition to granting bail, it is submitted that the accused has 3 active previous convictions, where two convictions are of the similar nature as the present charges.
  - ii) It is further submitted on behalf of the State that in relation to one previous conviction, the Applicant had to be tried in absentia and as a result that there is a high likelihood of the Applicant not attending Court, if bail is granted in this matter.
  - iii) Further, State is confident that they have a very strong case against the Applicant, supported by CCTV evidence.
  - iv) It is also submitted for the State that under **Section 19 (1) (c)** of the **Bail Act of 2002**, bail should be granted unless in the opinion of the Court, granting of bail to the Applicant would endanger the public interest or make the protection of the community more difficult. In this matter, in considering the Applicants past record, if bail is granted to the Applicant that will make protection of the community more difficult.

### **The Law and Analysis**

- 5. Pursuant to **Section 13** of the **Constitution of Fiji** and **Section 3(1)** of the **Bail Act of 2002**, every person charged with an offence has a right to be released on bail, unless it is not in the interest of justice. **Section 3 (3)** stipulates that there is a presumption in favor of granting of bail.
- 6. To address the circumstances in this matter, this Court intends to take guidance from the **Supreme Court** decision of **Abhinesh Kumar v The State [2021] FJSC 1; CAV 20 of 2020 (5 February 2021)**, where His Lordship the Chief Justice stated, as below:

*“Before coming to a decision to deprive personal liberty of a person, interests of public and interests of the accused must be rightly balanced. In balancing competing interests, courts must be mindful of the primary consideration in determining bail; that is the likelihood of the accused person surrendering to custody and appearing in court to face his or her trial.”*
- 7. In this matter, there is no evidence to claim that the Applicant avoided appearing in Court to face the charges against him, since he had been in custody from the very inception. Though there is material to establish that the Applicant had been tried in absentia and convicted previously, there is no material indicative of the reasons for his absence in that matter.

8. Further, this Court gives due credence to the fact that the Applicant had been in custody for 17 months pending trial.
9. In considering these circumstances, I order that Applicant be released on bail pending trial of Criminal Case No. HAC 162 of 2021 on following conditions:-

10. **Bail Conditions**

- i) Applicant enter into a personal bond of \$2000.00 (non-cash);
- ii) Applicant to tender two Sureties to the prosecution to check the suitability, who should enter into a bail bond in the sum of \$2000.00 (non-cash) each;
- iii) The Applicant to be subject to a curfew between the hours of 9.00pm and 6.00am each day;
- iv) The Applicant is to report to Nabua Police Station between 6.00am and 6.00pm each Wednesday;
- v) Applicant is not to interfere with any witness in any form or manner;

11. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in blue ink, appearing to read "Thushara Kumarage", written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

At Suva  
This 5<sup>th</sup> day of June 2023

cc: *Office of Director of Public Prosecutions*  
*Office of Legal Aid Commission*