

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

**CRIMINAL APPEAL NO: HAA 29 OF 2024**

BETWEEN:

**VINOD KUMAR**  
Appellant

AND:

**STATE**  
Respondent

**Counsel:** Mr. Khan Iqbal for the Appellant  
Ms. Ram, P for the Respondent

**Hearing:** 13 December 2024

**Judgment:** 10 January 2025

**JUDGMENT**

1. This is an appeal by the Appellant. It is against the bail ruling imposed on the Appellant by the Nausori Magistrate's Court on 17<sup>th</sup> July, 2024 in respect of the following offence;

**Statement of Offence (a)**

**Breach of Bail Conditions:** Contrary to section 25(1) (b) and 26(1) of the Bail Amendment Act 2012.

**Particulars of offence (b)**

**Vinod Kumar** on the 25<sup>th</sup> day of June, 2024 at Nausori in the Central Division breached bail condition imposed by the Suva High Court Vide Case No. 140/22 dated 26/07/24 by directly interfere with the complainant for a distance of 500 meters, when ordered by the Court to be apart from complainant for a distance of 500 meters.

2. The Learned Magistrate refused to grant bail to the Appellant based on the information that he had interfered with the victim. Additionally, in the Appellant's affidavit he has brought suspicion upon himself and to avoid potential breach or interference, the Court finds that it is not in the public interest to grant bail to the Appellant.

### **Grounds of Appeal**

3. The grounds of appeal are:
  - (i). THAT the Learned Magistrate erred in law and in fact when she did not take into any consideration the High Court authorities which was provided by the Petitioner's Counsel in respect of the criteria that ought to be applied on breach of bail and as such there was a substantial miscarriage of justice.
  - (ii). THAT the Learned Magistrate erred in law and in fact when she took irrelevant consideration in refusing bail to the Petitioner and as such there was a substantial miscarriage of justice.
  - (iii) THAT the Learned Magistrate erred in law and in fact when she failed to consider that the State had breached the Bail Act in not bringing the Petitioner within 24 hours after his arrest and as such there was a substantial miscarriage of justice.
  - (iv) THAT the Learned Magistrate erred in law and in fact when not taking into adequate consideration that it was the victim who had already given evidence in Court voluntarily came to the Petitioner when the Police Officer had directed the Petitioner to take the child and that the child would be staying with the Petitioner and as such there was a substantial miscarriage of justice.
  - (v) THAT the Learned Magistrate erred in law and in fact in not taking into consideration Petitioner's submissions that according to the Petitioner's affidavit filed in Court by virtue of Section 26 (2) of the Bail Act that the Petitioner had reasonable excuse as defense and as such State did not have a strong case and thereby there has been a substantial miscarriage of justice.
  - (vi) THAT the Learned Magistrate erred in law and in fact in not giving reasons for not considering adequately the legal authorities that was provided to her to consider in cases of breach of bail and as such there was a substantial miscarriage of justice.

### **Law**

4. The Bail Act 2002 has two approaches to challenge a bail decision. Section 30(3) of the Act states that the High Court may review any decision by in relation to bail. Section

30(10) of the Act states that a review is a rehearing and the Court may receive evidence before making a decision on bail. The key distinction between an appeal and a review is that on appeal the decision on bail is considered for errors in the exercise of discretion by the lower court, while on review, the decision on bail is considered afresh.


### **Analysis**

5. Since this is an appeal against the lower court's decision, this court is to consider as to whether there were errors in the Learned Magistrate's exercise of discretion.
6. By analyzing the lower court's decision, I am satisfied that the Learned Magistrate has applied the law correctly. The Learned Magistrate refused bail based on the Appellant's affidavit that he had brought suspicion upon himself and to avoid any potential breach or interference, bail was refused.

### **Orders**

7. This appeal is dismissed.



  
Waleen George  
Acting Puisne Judge

Dated at Suva this 10<sup>th</sup> day of January, 2025

**Solicitors: Iqbal Khan & Associates for the Appellant.  
Office of the Director of Public Prosecution for the Respondent.**