

APISAI VUNIYAYAWA TORA & OTHERS

v.

REGINAM

[COURT OF APPEAL, 1978 (Gould V P., Marsack J. A., Henry J. A.),
20th March]

Criminal Jurisdiction

*Criminal Law—Appeals—application for bail pending appeal—principles applicable—
Court of Appeal Ordinance (Cap. 8) Section 33(2)*

The Court reaffirmed that only in exceptional circumstance will a convicted prisoner be granted bail pending the determination of his appeal.

No cases were referred to.

Applications for bail pending appeal following conviction in the Supreme Court.

S. M. Koya for the applicants.

D. V. Fatiaki for the respondent.

Decision of the Court (Read by Gould V. P.):

It has been a rule of practice for many years that where an accused person has been tried, convicted of an offence and sentenced to a term of imprisonment, only in exceptional circumstance will he be released on bail during the pendency of an appeal. This is still the rule in Fiji. The mere fact that an appeal is brought can never of itself be such an exceptional circumstance and a court to which an application for such bail is made is very seldom in a position to assess the appellant's chances of success in his appeal. As a general rule, the merits of the appeal are not relevant to applications such as those now before the Court, though there may be cases in which they are a factor to be taken into consideration.

Some delay in the hearing of any appeal is inevitable; there is no system which can eliminate it. A record of the trial, which may be very lengthy, must be prepared; the case must take its place in the lists of overburdened Courts. Abnormal delay not attributable to the appellant may be taken into account by a Court in considering whether or not to grant bail. There are some cases of what we think of as normal delay, particularly where a short sentence has been passed, which may result in injustice if bail is withheld. The sentence may have been completely or very substantially served, only to be quashed on appeal. We would contrast such cases with those in which a long term of imprisonment has been imposed, in two ways. First the longer sentence indicates conviction of a more serious offence and, second, the risk of injustice to a man who has served only a small proportion of his sentence is less by comparison with one who may have served the whole or substantially the whole of the term which his offence was considered to merit.

Applying these principles, we decide the applications now before us as follows. In the case of Apisai Vunivayawa Tora the application is allowed—bail will be granted pending appeal to this Court in a personal bond of \$500 and two sureties each in the sum of \$500. In the cases of Shiu Raj Singh and Damodar Naidu the applications are refused.

One application allowed; two applications dismissed.