

IN THE COURT OF APPEAL
FIJI ISLANDS AT SUVA

[Misc. Action No. 09 of 2010]

BETWEEN : NAVIN CHAUDHARY
(APPLICANT)

AND : STATE
(RESPONDENT)

BEFORE : The Hon. Acting President, Mr John E. Byrne
: The Hon. Justice of Appeal, Mr William Marshall
: The Hon. Justice of Appeal, Mr Salesi Temo

COUNSEL : Applicant in Person
: Ms R. Drau for the Respondent

DATE OF HEARING
AND RULING : 28th September 2010

RULING ON APPLICATION FOR BAIL PENDING TRIAL

- [1] The applicant is jointly charged with two other persons with two counts of aggravated robbery. The offences were allegedly committed on 13th March 2010. The victims are husband and wife and the offences are allegedly to have occurred at the same time. The state alleges that the applicant and his co-accused entered the house of the victims at night and robbed them of substantial cash and valuable items consisting mainly of gold bangles and bracelets and other items of personal ornament together with \$20,000.00 cash and a mobile phone and a camera. It is unnecessary to mention all the items and suffices to say that they are valued at over \$55,000.00.
- [2] At the time of the alleged offences it is alleged the applicant and his colleagues were armed with a cane knife, pinch bar and screwdriver with which they threatened their victims.
- [3] The applicant and his colleagues have been committed for trial in the High Court but it is unlikely that this will be heard until approximately March 2011. He has applied for legal aid but it is unlikely any decision on this will be given for at least another 2 months.
- [4] The applicant is 36 years old and does not have any dependants. He has 36 previous convictions since 2005 most of which involve damage to property, criminal intimidation, house breaking entering and larceny and two convictions for escaping from lawful custody.
- [5] He applied for bail to Goundar, J of the High Court on the 26th of April 2010 and his application was refused.

- [6] In a five-page ruling Goundar, J considered the principles governing applications for bail and in our judgment he committed no error in law in stating those principles.
- [7] Section 3(1) of the Bail Act states that an accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted. Section 3(3) of the Act states that there is a presumption in favour of the granting of bail to a person but this may be rebutted where the court is satisfied that it is unlikely the accused person will appear in Court to answer the charges laid against him or her as in Section 17(2).
- [8] Goundar J, considered that because of the applicant's criminal record there was a real likelihood that he would not answer bail if it were granted. He also considered that granting bail would endanger the safety of the community because of the applicant's criminal history.
- [9] Before this Court and before Goundar, J the applicant complained of inhumane conditions in the Prison in which he is detained. These consisted in part of dirty blankets and mattresses which are infested with cockroaches and bed bugs.
- [10] As Temo, J.A pointed out to the applicant, such conditions are common in the tropics and the Court does not regard them, if they are true, as sufficient to warrant the applicant being released on bail. It is true, as the applicant states, that he has no previous conviction for robbery with violence but his list of convictions for other offences involving damage to property and personal violence is enough in our view to warrant this Court dismissing his application which is accordingly refused.

Dated at Suva this 28th day of September 2010.

John E. Byrne

John E. Byrne, Acting President



William R. Marshall

William R. Marshall, Judge of Appeal

Salesi Temo

Salesi Temo, Judge of Appeal