IN THE COURT OF APPEAL, FIJI
[On Appeal from the High Court of Fiji]

CRIMINAL APPEAL NO: AAU0143/2015
[High Court Case No. HAC 250/2014]

BETWEEN	:	**SAVITA SINGH**
		Appellant
AND	:	**THE STATE**
		Respondent
Coram	:	Hon. Mr. Justice Daniel Goundar
Counsel	:	Mr. J. Reddy for Appellant Ms S. Puamau for Respondent
Date of Hearing	:	10 March 2016
Date of Ruling	:	18 March 2016

RULING

[1] The appellant seeks leave to appeal against sentence and bail pending appeal. Her appeal is timely.

[2] The appellant was jointly charged with two others on one count of money laundering. She pleaded guilty to the charge at the first reasonable opportunity in the High Court at Suva. On 19 October 2015, she was sentenced to 5 years' imprisonment with a non-parole period of 12 months. One of her accomplices is her husband. The other accomplice is a former employee of the Fiji Revenue and Customs Authority (FRCA). The two accomplices face multiple charges and their cases are pending for trial in the High Court.

[3] The facts were that in 2011, FRCA detected an anomaly in relation to 27 taxpayers using the same postal address. Further investigation revealed a scam where tax refunds were paid out on fraudulent activities. One of the cheques in the sum of $2400.00 was paid to the appellant. The appellant deposited this cheque in her personal bank account knowing that the cheque was derived from some form of an unlawful activity. This transaction occurred

in early 2007 when the appellant was a student at the University of South Pacific. She was studying to become a school teacher. At that time she was also in a relationship with one of her accomplices whom she married later and had a child. Her child is now 3 years old. At time of the sentencing the appellant had been teaching in a High School for the past three years.

[4] The sole ground of appeal is that the sentence is harsh and excessive in all the circumstances of this case. The test for leave is whether there is an arguable error in the sentencing discretion of the learned judge (**Naisua v The State** unreported Cr Case No. CAV0011/13). The test for bail pending appeal is more stringent. Because the appellant is a convicted person, the presumption in favour of bail is displaced (section 3 (4) (b) of the Bail Act 2002). In determining whether to grant bail, I am obliged to consider three factors under section 17(3) of the Bail Act. The factors are:

(a) The likelihood of success in the appeal;

(b) The likely time before the appeal hearing;

(c) The proportion of the original sentence which will have been served by the appellant when the appeal is heard.

[5] It has been said in many cases that the Bail Act is not a complete code (**Zhong v The State** unreported Cr App No. AAU44 of 2013; 15 July 2014, **Viliame Tiritiri v The State** unreported Cr App No. AAU9 of 2011; 17 July 2015). While the court must consider section 17(3) factors, the application for bail is not confined to those factors (**Seniloli & Others v The State** Cr App No. AAU0041/04S; 23 August 2004). In considering whether to grant bail, the court may also consider exceptional circumstances (**Apisai Vuniyayawa Tora and Others v R** (1978) 24 FLR 28). The burden is on the appellant to show the exceptional circumstances, that is, circumstances which drive the court to the conclusion that justice can only be done by granting bail (**Sachida Nand Mudaliar v The State** Cr App. No. AAU0032 of 2006; 16 June 2006, at [5] per Ward P).

[6] This is a fairly new appeal. So far the appellant has served five months of her 5-year sentence. The appeal has not been assigned a hearing date yet. At this stage I cannot say

that there is a very high likelihood that the appellant will have served a significant portion of her sentence before her appeal is heard.

[7] The main argument presented against the sentence is that the learned judge took into account irrelevant considerations as aggravating factors to enhance the sentence. In his sentencing remarks, the learned judge identified the following aggravating factors:

> (i) The proceeds of crime in relation to the offence committed are fund of a Government agency;
>
> (ii) Your involvement in the commission of the offence is not limited to being a mere accessory to a grand scheme of fraud, but as an active participant at its several stages;
>
> (iii) Your involvement in the fraud is spread over several years of activity.

[8] The sentence was increased by 3 years to reflect the aggravating factors. The appellant's argument is that she was charged with one offence and that the facts she admitted showed that she was involved in one transaction only, namely, depositing one of the tainted cheques into her bank account, unlike her accomplices who were involved in multiple transactions and were charged with multiple offences. Counsel for the State fairly concedes that apart from the money being public funds, there was no basis to consider that the appellant was an active participant or involved in a grand scheme of fraud over several years as aggravating factors.

[9] The second alleged error which the State concedes is in the mathematical calculation of the sentence. The learned judge took 6 years as his starting point and deducted one third (2 years) for the early guilty plea and arrived at a term of 4 years. He then added 3 years for the aggravating factors and deducted 3 years for the mitigating factors. Instead of arriving at a term of 4 years, the learned judge imposed a sentence of 5 years.

[10] It is also apparent from the sentencing remarks that instead of applying the case of **O'Keefe v State** unreported Cr Case No. AAU29/07; 25 June 2007, which is a Court of Appeal decision on sentencing for money laundering, the learned judge applied the High Court decisions which are on appeal to the Court of Appeal. The main principle that was

enunciated in **O'Keefe** was that an offender who is sentenced for money laundering must be sentenced for the conduct that was used to disguise the true nature of the proceeds of crime. In the present case, as the State's concedes, the learned judge did not sentence the appellant for one conduct of depositing the tainted cheque but for the overall fraud committed over several years.

[11] The final argument relates to the payment of restitution. Not only the appellant entered an early guilty plea, she paid the full sum of $2400.00 to FRCA. She admitted the offence under caution and maintained that position when she appeared in the High Court. When she pleaded guilty she must have realised that her teaching profession is going to come to an end and that she is unlikely to secure any other meaningful employment because of the criminal conviction. All these factors when taken together show that the appellant was genuinely remorseful for her poor judgment and conduct that occurred eight years ago. Generally, genuine remorse in fraud cases even when the amount is significant lead to a suspended sentence (**State v Mahendra Prasad** Criminal Case No. HAC00/02S; 30 October 2003). The learned judge did not consider these matters in his sentencing discretion. In my judgment the appellant has satisfied that her appeal has a very high likelihood of success and that justice can only be done by granting bail. I would grant leave and release the appellant on bail pending appeal. Terms and conditions of bail will be determined after delivery of this ruling.

Result

Leave granted.

Bail granted.

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Hon. Mr. Justice Daniel Goundar

JUSTICE OF APPEAL

Solicitors:

Jitend Reddy Lawyers for the Appellant

Office of the Director of Public Prosecutions for the State