

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**MISCELLANEOUS JURISDICTION**

**MISCELLANEOUS CASE NO. HAM 201 OF 2012S**

**KUNAL EDWIN PRASAD**

**VS**

**THE STATE**

**Counsels : Accused in Person**  
**Mr. Y. Prasad for State**

**Hearing : 2<sup>nd</sup> November, 2012**

**Ruling : 2<sup>nd</sup> November, 2012**

**Written Reasons: 3<sup>rd</sup> May, 2013**

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**WRITTEN REASONS FOR REFUSAL OF BAIL APPLICATION**

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1. When the accused first appeared in the Suva Magistrate Court on 24<sup>th</sup> September, 2012, he was charged with the following offences:

**COUNT ONE**

**Statement of Offence**

**AGGRAVATED ROBBERY**: Contrary to Section  
311(1)(a) of the Crimes Decree No. 44 of 2009.

**Particulars of Offence**

**DESHWAR KISHORE DUTT, KUNAL EDWIN PRASAD**  
and **MAIKA MATEYAWA**, on the 19<sup>th</sup> day of Septmber,  
2012, in Suva, in the Central Division, committed robbery  
in company with other persons at the Samabula branch of  
the Bank of the South Pacific and stole the total sum of  
**FJD\$70,000.00** belonging to the said Bank of the South  
Pacific.

## **COUNT TWO**

### **Statement of Offence**

**HARBOURING PRISONERS AT LARGE**: Contrary to  
Section 52(3)(c) of the Prisons and Corrections Act No. 2  
of 2006.

### **Particulars of Offence**

**DESHWAR KISHORE DUTT, KUNAL EDWIN PRASAD**  
and **MAIKA MATEYAWA**, on the 19<sup>th</sup> day of September,  
2012, in Suva, in the Central Division, knowingly and  
without lawful excuse assisted prisoners illegally at large  
namely **TEVITA SUGU, ISOA WAQA, SOLOMONI**  
**QURAI, EPELI QARANIQIO** and **JOSAIA USUMAKI**.

2. He has been remanded in custody since then. On 23<sup>rd</sup> October, 2012, he applied for bail in the Standard High Court bail application form. The State replied with an affidavit from Detective 3036 Amani Satuwere. I have carefully read the papers filed by the parties. On 2<sup>nd</sup> November, 2012, I heard the parties. I refused bail, and I said I would give my written reasons later. Below are my reasons.
3. It is well settled that, an accused person is entitled to bail pending trial, unless the interest of justice requires otherwise (section 3(1) of the Bail Act 2002). It is also well settled that, the primary consideration in deciding whether to grant bail is the likelihood of the accused person turning up in

court to take his trial on the date arranged (section 17(2) of the Bail Act 2002). It is also well settled that, in order for the court to decide the above issue, it is mandatory for it to consider each of the factors mentioned in section 19 of the Bail Act 2002, that is, the likelihood of the accused surrendering to custody, the interest of the accused and the public interest and protection of the community.

**Factor No. 1: The Likelihood of Accused Surrendering to Custody:**

4. The accused is 27 years old, and reached Form 4 level education. He resides at Bau Road, Nausori and earns his living selling firewood. He earns about \$100 per week. He has been residing at Bau Road all his life. The allegation against the accused is very serious. It is alleged that he, with others robbed Bank of South Pacific (Samabula) of \$70,000 on 19<sup>th</sup> September, 2012. If found guilty, the accused faced a possible sentence between 12 to 14 years imprisonment. According to the prosecution, he allegedly confessed to been part of the crime. Under this head, the accused's chances of getting bail are slim.

**Factor No. 2: The Interest of the Accused:**

5. The trial for this case will occur sometimes next year. The accused had been remanded in custody since September, 2012. So, he had been in custody for 7 months. Time spent in custody while on remand will be deducted from the final sentence, if he's found guilty. I understand he has waived his right to counsel, and wishes to represent himself. He is not incapacitated, and it appeared there is no reason for him to be at liberty for other lawful reasons. A new remand centre is about to be open in Suva, thus giving him the opportunity to enjoy new facilities. Under this head, the accused's chances of bail are slim.

**Factor No. 3: The Public Interest and the Protection of the Community:**

6. The allegations against the accused are very serious. The Bank of South Pacific (Samabula) was violently robbed of \$70,000 on 19<sup>th</sup> September, 2012. The alleged escape of 5 prisoners at the time caused great alarm among the public. According to the prosecution, the accused allegedly provided the transport for the prisoners to escape from Naboro Prison, and 4 of them to be involved in the above bank robbery. In my view, although the accused is presumed innocent until proven guilty beyond reasonable doubt in a court of law, it is in the public interest and the

protection of the community that he be remanded in custody. Under this head, the accused's chances of bail are slim.

**Conclusion:**

7. Because of the above, I refused the accused's bail application on 2<sup>nd</sup> November, 2012.

**Salesi Temo**  
**JUDGE**

**Solicitor for Accused** : **In Person**  
**Solicitor for the State** : **Office of the Director of Public Prosecution, Suva.**