

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

**CRIMINAL MISCELLANEOUS CASE NO: HAM 031/2013**

**BETWEEN:**

**NEMANI KAREREVERE**

**APPLICANT**

**AND:**

**STATE**

**RESPONDENT**

**COUNSEL:**

**Mr J Savou for the Applicant**

**Mr J B Niudamu for the Respondent/State**

**Hearing Date:**

**09/04/2013**

**Ruling Date:**

**13/05/2013**

**RULING ON BAIL PENDING APPEAL**

01. **Nemani Kaverevere** (hereinafter “the applicant”) was charged for the offence of Robbery contrary to section 310(1)(a)(i) of the Crimes Decree 2009.
02. The trial commenced before learned Resident Magistrate Pamela Ratnayake on 06<sup>th</sup> August 2010 and concluded on 06<sup>th</sup> April 2011 after several adjournments. After several more adjournments the judgement was delivered by learned Chief Magistrate Mr Ratuveli on 1<sup>st</sup> February 2012 and the Applicant was found guilty of the charge.
03. On 27<sup>th</sup> March 2013 the Applicant was sentenced to 03 years 07 months and 15 days imprisonment with non –parole period of 02 years.
04. The Applicant lodged his Petition of Appeal on 10<sup>th</sup> of April 2012. He is Appealing against both conviction and the sentence imposed by Learned Chief Magistrate.

05. Applicant filing this application submits that the Applicant will serve whole or substantial part of his prison term before his Appeal is heard. Also submits that there is a high likelihood of success in the Appeal based on the ground which he has urged.
06. Bail Pending Appeal is governed under section 17(3) of the Bail Act 2002. According to section 17(3) of the Bail Act;
- (3) When a court is considering the granting of bail to a person who has appealed against conviction and sentence court must take into consideration-
    - (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 Applicant when the Appeal is heard.
07. The presumption in favour of the granting bail is displaced where the person has been convicted and has appealed against conviction. The Applicant therefore has to prove the existence of exceptional circumstances or any consideration under section 17(3) of Bail Act.
08. In **James Praneel Singh v State** Misc. Ac. No. HAM 25/04, Madam Shameem J, stated at Paragraph 3:
- “The principles relevant to this application are whether a substantial portion of the sentence will have been served at the time of the appeal is heard, the merit of the appeal and any exceptional grounds justifying bail. There is no right to bail pending appeal”
09. In **Senitiki Naqa & Others v State** Cr.Misc.Ac.No.HAM 23/04 at p.6 paragraph, per Justice Winter:
- “I remind myself that this is a bail application pending appeal and that any assessment on the likelihood of success of the appeal is just exactly that an assessment of likelihood not a prediction or judgement. This must be a test with a low threshold. In these bail applications the appeal case is not to be scrutinized but assessed on its likely outcome”
10. The appeal hearing will be set very soon. The Applicant filed 07 grounds of Appeal. Considering the evidence adduced during the trial there is no highly likelihood of success in the Appeal. But all grounds of Appeal will be heard during the Appeal argument.

11. The total sentence he has to serve as per the judgement is 03 years 07 months and 15 days. If the Appeal is heard fairly soon then the Applicant would not have served a substantial part of entire sentence.
12. Considering the above factors the Applicant's Bail Pending Appeal Application has no exceptional grounds to grant bail in this case.
13. Bail refused.

P Kumararatnam  
**JUDGE**

At Suva  
13/05/2013

