

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**MISCELLANEOUS JURISDICTION**

**MISCELLANEOUS CASE NO. HAM 144 OF 2013S**

**JALESI BATIMUDRAMUDRA**

**VS**

**THE STATE**

**Counsels : Mr. R. Vananalagi for Accused**

**Ms. S. Naidu for State**

**Hearing : 26<sup>th</sup> July, 2013**

**Judgment : 19<sup>th</sup> September, 2013**

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**RULING ON BAIL PENDING TRIAL**

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1. On 26<sup>th</sup> July 2013, in the presence of his counsel, the accused pleaded not guilty to the following information:

**FIRST COUNT**

**Statement of Offence**

**AGGRAVATED BURGLARY: Contrary to Section 313**

**(1) (a) of the Crimes Decree No. 44 of 2009.**

**Particulars of Offence**

**JALESI BATIMUDRAMUDRA with another** on or about the 2<sup>nd</sup> day of March 2013, at Lot 61 Mead Road, Tamavua, in the Central Division, entered into the dwelling house of **KENNETH JOHN McHUGH** as a trespasser with intent to steal from therein.

## **SECOND COUNT**

### **Statement of Offence**

**THEFT**: Contrary to Section 291 (1) of the Crimes Decree No. 44 of 2009.

### **Particulars of Offence**

**JALESI BATIMUDRAMUDRA with another** on or about the 2<sup>nd</sup> day of March 2013, at Lot 61 Mead Road, Tamavua, in the Central Division, dishonestly appropriated 1 grey Apple iPod with charger and earphones worth \$800.00, 1 E-Machine laptop worth \$1,200.00, 1 black Verbatim hard drive with USB cable \$200.00, 1 Sony Video Camera with hard drive, charger and camera bag worth \$1,800.00, 1 Nokia mobile phone with grey cover and black base worth \$400.00, 1 Audio to Go MP3 Player worth \$500.00, 2 earphones, 2 HP Black Print cartridges, 2 black and white cables, 2 black Billabong beach towels worth \$280.00, 1 blonde hair wig worth \$1,600.00, 1 Elizabeth Arden perfume worth \$1500.00, 1 Rockwave gents aftershave worth \$150.00, 3 pairs of white socks worth \$90.00, 1 black Billabong bag with bluish grey checks worth \$195.00, 1 black carryon bag worth \$200.00, 1 pair of white, grey and blue New Balance joggers worth \$190.00, 2 sports shirts worth \$130.00, 1 blue and white Bula Shirt worth \$20.00, 1 Electric Rose spray, 1 pair 9kt

diamond studs worth \$100.00, 1 pair round shaped gold diamond earrings worth \$1,400.00, 1 gold drops diamond pendant worth \$800.00, 1 gold rope chain worth \$1,000.00, 1 gold rope bracelet worth \$800.00, 1 gold ring with 4 diamonds and 1 sapphire worth \$1,000.00, 1 pair gold Euro Ball drop earrings worth \$400.00, 1 gold Belcher Link chain worth \$3,400.00, 1 gold Belcher Link bracelet worth \$2,000.00, 1 gold and diamond Sovereign coin worth \$5,000.00, 1 oval shaped gold locket with family photo worth \$500.00, 1 flat gold chain worth \$800.00, 1 pair silver Euro Ball drop earrings worth \$80.00, 1 pair white pearl and diamond earrings worth \$500.00, 1 pair sapphire earrings worth \$800.00, 1 plain gold ring with designs worth \$200.00, 1 pair gold and diamond loop earrings worth \$600.00, 1 Seiko gold plated wrist watch with inscriptions "To Frank" worth \$500.00, Australian currency valued at AUD 100.00, Fijian currency valued at FJD 60.00, a total value of approximately FJD 27,945.00 all properties of **KENNETH JOHN McHUGH**, with the intention to permanently deprive the said **KENNETH JOHN McHUGH** of the said properties.

2. He first appeared in the Suva Magistrate Court on 8<sup>th</sup> March 2013, and had been remanded in custody since then. So, in a sense, he had been in custody for approximately 6 months. On 17<sup>th</sup> June 2013, he applied for bail pending trial, in the Standard High Court bail application form. He said, he wanted to support his parents and sister. He also said, he was the sole bread winner. The State replied with an affidavit from DC 3722 Munilesh, on 25<sup>th</sup> July 2013. DC 3722 was the police investigation officer, and they opposed bail. They said, the accused had escaped from custody before, and he has 3 pending cases in the Magistrate Court. I heard the parties on 26<sup>th</sup> July 2013, and adjourned today for a ruling.

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 22 years old and single. He stays at Lot 6 Kaukimoce Road, Namadi Heights. He had resided at the address since birth. He reached Form 5 level education at Suva Grammar School. He worked at a construction site and earned \$80 per week. He has 4 previous convictions in the last 10 years, that is, "Damaging Property", "Larceny", "Escaping from Lawful custody" and "Forfeiture of Bail Bond". In this case, the prosecution said, they have a strong case against him. They said, he allegedly confessed to the crimes, and some of the complainant's stolen properties, were recovered from his home. If found guilty, the accused faces a possible prison sentence of more than 10 years imprisonment. Under this head, the accused's chances of bail are slim.

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

5. The accused will be tried late next year, or early 2015. He had been remanded in custody for the last 6 months. The court has the power to remand people facing serious charges in custody for 2 years. In any event, time spent in custody while on remand, will be deducted from his final sentence, if found guilty. There is now the new Suva Remand Centre, and he can enjoy new facilities. He has been granted legal aid, and his counsel can visit him in custody, to take instructions, as and when he pleases. There does not appear to be any need for him to be at liberty, for other lawful reasons. He is not incapacitated. In my view, his chances of bail under this head, are slim.

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

6. The allegations against the accused are certainly serious. He, with another, allegedly broke into the complainant's house at night, on 2<sup>nd</sup> March 2013, and stole \$27,945 worth of properties. The people of Fiji are sick and tired of burglaries and thefts committed against them, by cowardly individuals. Although the accused is presumed innocent until proven guilty beyond reasonable doubt, in a court of law, in my view, it is in the public interest and the protection of the community that he be remanded in custody, until further orders of the court. Under this head, the accused's chances of bail are slim.

**Conclusion:**

7. Given the above, I deny the accused's bail application. He is remanded in custody until further orders of the court.

**Salesi Temo**  
**JUDGE**

**Solicitor for Accused** : **Legal Aid Commission, Suva.**  
**Solicitor for State** : **Office of the Director of Public Prosecution, Suva.**