

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**MISCELLANEOUS JURISDICTION**

**MISCELLANEOUS CASE NO. HAM 187 OF 2012S**

**DESHWAR KISHORE DUTT**

**VS**

**THE STATE**

**Counsels : Accused in Person**  
**Mr. L. Fotofili for State**

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

**Ruling : 10<sup>th</sup> June, 2013**

**Written Reasons: 19<sup>th</sup> September, 2013**

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**WRITTEN REASONS FOR REFUSAL OF BAIL**

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1. In Suva High Court Criminal Case No. HAC 338 of 2012S, the accused faced the following information, with other co-accuseds:

**Statement of Offence**

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

**Particulars of Offence**

**TEVITA SUGU, SOLOMONI QURAI, JOSAI A USUMAKI, EPELI QARANIQIO, DESHWAR DUTT and KUNAL PRASAD** together with others on the 19<sup>th</sup> day of September 2012 at Samabula in the Central Division, robbed the Bank of the South Pacific (BSP) and stole \$70,000 cash in Fijian and other foreign currencies.

2. The accused was also charged with other co-accuses, in Suva High Court Criminal Case No. HAC 343 of 2012S:

**Statement of Offence**

**AGGRAVATED ROBBERY:** Contrary to Section 311  
(1) (a) of the Crimes Decree 44 of 2009.

**Particulars of Offence**

**TEVITA SUGU, SOLOMONI QURAI, JOSAI A USUMAKI, EPELI QARANIQIO, DESHWAR DUTT together with another** on the 18<sup>th</sup> day of September 2012 at Muanikau, Suva in the Central Division, robbed **HONG YING** of a wallet, cash of FJD \$200, a credit card, driver's licence, assorted bank cards, assorted jewelleryes valued at FJD \$3,000, a Nokia mobile phone valued at FJD \$150, assorted liquor valued at FJD \$400 and a pair of Nike canvas shoes valued at FJD \$150 all to the estimated valued of FJD \$3,900, all the property of the said **HONG YING**.

3. The accused is facing other High Court Criminal charges, which are still pending in the High Court. He had been in custody since 24<sup>th</sup> September 2012, when he first appeared in the Suva Magistrate Court. When he appeared in the High Court, he had been remanded in custody until now. On 3<sup>rd</sup> October 2012, he applied for bail, by filing a notice of motion and an affidavit in support. He also

filed his written submission on 2<sup>nd</sup> November 2012. The State replied on 26<sup>th</sup> April 2013, with an affidavit in reply from Detective 3036 Amani Satuwere. I heard the parties on 26<sup>th</sup> April 2013. On 10<sup>th</sup> June 2013, I declined the accused's bail application, and said, I would give my reasons later. Below are my reasons.

4. 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:**

5. The accused is 34 years old, married with 2 children. He is self-employed driver between Suva and Nadi. He and his family resided at Waituri Road, Nausori. He reached Form 4 level education. He is the sole bread-winner. He is currently facing many criminal charges in the High Court of Suva, the most serious of which are the charges mentioned in paragraph 1 and 2 hereof. According to the prosecution, they have strong evidence against the accused. In HAC 338 of 2012S and HAC 343 of 2012S, according to the prosecution, he allegedly confessed to two crimes of "aggravated robbery". If found guilty of either charge, he faces a possible prison sentence of more than 12 years imprisonment. Under this head, the accused's chances of bail are slim.

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

6. The accused will be tried late 2014 or early 2015. He had been remanded in custody since 24<sup>th</sup> September 2012, and thus had been in custody for approximately 1 year. However, time spent in custody while on remand, will be deducted from his final sentence, if found guilty. The new \$11 million Suva Remand Centre had just been opened, and he can enjoy new facilities therein. I understand he had waived his right to counsel, and thus he will have all the time in this world, to

prepare his defence, while in custody. In my view, there is no need for him to be at liberty for other lawful reasons. He is not incapacitated. Under this head, the accused's chances of bail are slim.

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

7. The allegations against the accused are very serious. It was alleged that he and others, on 19<sup>th</sup> September 2012, violently robbed the BSP Bank, at Samabula. On 18<sup>th</sup> September 2012, it was alleged, he and others violently robbed a complainant at Muanikau, Suva. His other pending cases in the High Court involved alleged lawlessness in the Suva area, at the time. Although the accused is presumed innocent until proven guilty beyond reasonable doubt, in the 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:**

8. Because of the above, I refused the accused's bail application on 10<sup>th</sup> June 2013, and the above are my reasons. He is remanded in custody until further orders of the court.

**Salesi Temo**  
**JUDGE**

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