

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO.
HAM 172 OF 2014

BETWEEN : SALVIN SILAAN KUMAR
[Applicant]

AND : STATE
[Respondent]

Ms. S. Qisa for the Applicant
Ms. S. Babitu for the State

Date of Hearing : 9th October, 2013
Date of Ruling : 16th October, 2013

RULING
(Bail pending Appeal)

- [1] The applicant ("S.S.K") applies for bail pending appeal.
- [2] S.S.K was convicted in the Lautoka Magistrate Court on 14 May 2013 of dangerous driving causing death, contrary to S. 97(2) (c)(5) of the Land Transport Act, 1998 and one count of failure to stop after an accident, contrary to Regulation 63(1) and 87 of Land Transport Act [Traffic] Regulation 2000.
- [3] S.S.K entered a plea of guilty to the charges and was sentenced on the 20th May 2013 to 2 years imprisonment for the dangerous driving

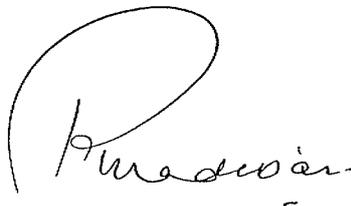
causing death and 30 days concurrent to the second offence of failing to stop.

- [4] The appellant has appealed against his sentence on the grounds that it is harsh and excessive given that he is a first offender and that he entered a plea of first opportunity.
- [5] Although there is a presumption in favour of bail pursuant to section 3(3); that presumption is displaced in cases of domestic violence and when the application is for bail pending appeal.
- [6] When applying for bail pending appeal the onus is on the applicant to show to the Court that he/she should be granted bail¹ and he/she can overcome the statutory displacement by satisfying two very important tests:
- (i) That he/she will have served most of his/her sentence before the appeal is determined, and
 - (ii) That the appeal has every likelihood of success.
- [7] If the applicant cannot satisfy either of these tests, there remains the residual “catch-all” test of “exceptional circumstances”. This rule was first expounded in R. Watlon [1978] Cr. App. R 293 where the Court said:
- “exceptional circumstances are such as will drive the Court to the conclusion that justice can only be done by granting bail”*
- [8] This application by way of Notice of Motion accompanied by an affidavit from Salvin Silaan Kumar’s wife, submits that he “suffers from gastric (sic)” and has “constant pain on his left hand due to a work injury”. She states that she has little or no money to pay the rent and feed the family. She worries about her health and worries about his elderly parents in Nadi, whom he was supporting.
- [9] Counsel for the applicant correctly rehearses the law and submits that the wife’s concerns are “exceptional circumstances” in terms of

Watlon, a principle adopted by the Fiji Court of Appeal in Ratu Jope Seniloli & 4 Others AAU0041/04.

Analysis

- [10] The concerns over loss or the breadwinner of the family probably pertain to 90% of the men who are imprisoned. Financial hardship to one's family is usually a by-product of being imprisoned for a crime and such reasons cannot therefore be regarded as "exceptional circumstances".
- [11] An appeal from the Magistrate to the High Court will in the normal course of events be heard in very short time, as opposed to appeals to the full Court of Appeal. Now 5 months into a 2 year sentence it cannot be said that he will have served most of his sentence by the time the appeal is determined. The appeal will be heard very soon.
- [12] By a cursory look at the grounds of appeal, it would appear that the grounds of appeal presently relied upon are at least arguable but without delving into the appeal it is impossible to say whether they have every chance of success or not.
- [13] In not being able to satisfy any of the tests for bail pending appeal discussed above, this Court refuses the application for bail pending appeal.



Paul K. Madigan
Judge



At Lautoka
14th October 2014

¹ Sachida Nand Mudaliar v State AAU0032, 2006 (PER Ward P)