

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**MISCELLANEOUS JURISDICTION**

**MISCELLANEOUS CASE NO. HAM 023 OF 2015S**

**BETWEEN**

**MESAKE TABAKA**

**APPLICANT**

**AND**

**THE STATE**

**RESPONDENT**

**Counsels : Applicant in Person  
Mr. Y. Prasad for Respondent**

**Hearing : 21 May, 2015**

**Ruling : 10 July, 2015**

**Written Reasons: 10 November, 2015**

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**WRITTEN REASONS FOR DENIAL OF BAIL**

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1. In Suva High Court Criminal Case No. HAC 082 of 2015S, the applicant (accused) was charged with "unlawful possession of 35 kg of cannabis sativa", contrary to section 5(a) of the Illicit Drugs Control Act 2004 (count no. 1), and "escaping from lawful custody", contrary to section 196 of the Crimes Decree 2009 (count no. 2).
2. The accused first appeared in the Nausori Magistrate Court on 16 February 2015, and since then had been remanded in custody. On 27 February 2015, the accused applied for bail in the standard High Court bail application form. The prosecution replied with an affidavit on 20 April 2015. The accused submitted various other papers in May, June and July 2015. I heard the parties on 21 May 2015, and on 10 July 2015, I declined the accused's bail application. I said I would give my reasons later. Below are my reasons.
3. An accused person is entitled to bail pending trial, unless the interest of justice requires otherwise. The test for the grant of bail is whether or not the accused will turn up in court on

the date arranged to take his trial. In deciding the above, it is mandatory for the court to consider the factors mentioned in Section 19 of the Bail Act 2002.

**Factor No. 1: Likelihood of Accused Surrender to Custody**

4. The accused is 33 years old, married with no child. He resides at Delasese Settlement, at Wainibuka, Tailevu. He reached Form 6 level education at Ratu Kadavulevu School and is a farmer. He plants cassava, dalo and yaqona. According to the prosecution, they had a strong case against the accused. They said, the police raided his farm on 9 January 2014, and found 35 kg of cannabis sativa unlawfully in his possession. When caution interviewed by police, he said, he knew of the cannabis sativa, but blamed his brother. His brother said, it was his. If found guilty after trial, the accused faced a possible prison sentence of more than 14 years imprisonment. He also allegedly admitted being on the run from police for one year. Under this head, the accused's chances of bail are slim.

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

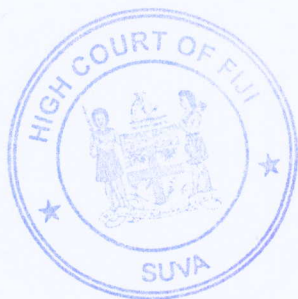
5. Trial for the accused had been set from 29 August to 2 September 2016. It is approximately 9 months away. He had been remanded in custody since 16 February 2015 when he first appeared in the Nausori Magistrate Court. He had been remanded in custody for the last 9 months. The court is empowered to hold people in custody pending trial for 2 years. However, time spent in custody while in remand will be deducted from the final sentence, if found guilty, after trial. He is presently remanded at the new Suva Remand Centre. He is represented by Legal Aid counsels, and they can visit him in custody, as and when they pleased. There does not appear to be any reason for him to be at liberty for other lawful reasons. He is not under 18 years and is not incapacitated. Under this head, the accused's chances of bail are slim.

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

6. The allegations against the accused were very serious. It was alleged that 35 kg of cannabis sativa was found in his possession. The evils of drugs had been documented in various publications. 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 chances of the accused's bail are very slim.

**Conclusion**

7. The above are my reasons for denying the accused's bail on 10 July 2015. He is remanded in custody until further orders of the court.



A handwritten signature in blue ink, appearing to be "Salesi Temo". The signature is stylized and fluid.

**Salesi Temo**

**JUDGE**

**Solicitor for Applicant** : **In Person**  
**Solicitor for Respondent** : **Office of the Director of Public Prosecution, Suva.**