

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

**CRIMINAL MISCELLANEOUS CASE NO: HAM 117 OF 2016**

**BETWEEN: PRANIL RAVINDRA SAMI**

**Applicant**

**AND: STATE**

**Respondent**

**Counsel :** Mr. A. Singh for the Applicant  
Ms. S. Kiran for the Respondent

**Date of Hearing : 03<sup>rd</sup> August, 2016**

**Date of Ruling : 23<sup>rd</sup> August, 2016**

**RULING ON BAIL PENDING APPEAL**

1. The Applicant applies for bail pending appeal.
2. He was charged with one count of Dangerous Driving Occasioning Death contrary to Section 97(2) (c), 5 (d), (8) and Section 114 of the Land Transport Act No. 35 of 1998.
3. After a full trial, the Applicant was convicted of the charge and was sentenced on 24<sup>th</sup> May, 2016, to two years' imprisonment by the Magistrate at Lautoka. In addition to that, a fine of 10 penalty units was imposed. His driving license was also suspended for 1 year.

4. The Applicant filed a notice of appeal against the conviction and sentence within time.

### **Law Relating to Bail Pending Appeal**

#### **Bail Act**

5. The presumption in favour of the granting of bail is displaced where a person has been convicted and he has appealed against the conviction [Section 3 (4) (b)]
6. Section 17 (3) of the Bail Act deals with bail pending appeal. The Section reads as follows;

*When a court is considering the granting of bail to a person who has appealed against conviction or sentence, the court must take into account;*

- 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.*

#### **Case Law**

7. The law relating to bail pending appeal is settled. Where an Accused person has been tried, convicted of an offence and sentenced to a term of imprisonment, only in exceptional circumstances will he be released on bail during the pendency of an appeal. It is not sufficient that the appeal raises arguable points. The chances of the appeal succeeding factor in Section 17 (3) has been interpreted to mean a very 'high likelihood of success'.
8. In *Ratu Jope Seniloli and others v The State* (Crim App. No. AAU0041/04S. High Court Cr. App No.002S/003, 23 August 2004 said:

*"It has been a rule of practice for many years that where an accused person has been tried, convicted of an offence and sentenced to a term of imprisonment, only in exceptional circumstances will he be released on bail during the pendency of an appeal. This is still the rule in Fiji. The mere fact an appeal is brought can never of itself be such an exceptional circumstance".*

9. The fundamental difference between a person who has not been convicted and to whom the presumption of innocence still applies and a person who has been convicted and sentenced to a term of imprisonment was discussed in *Amina Koya v. State* (Crim App AAU0011/96) in following terms:

*"I have borne in mind the fundamental difference between a bail applicant waiting Trial and one who has been convicted and sentenced to jail by a court of competent jurisdiction. In the former the applicant is innocent in the eyes of the law until proven guilty. In respect of the latter he or she remains guilty until such time as a higher court overturns, if at all, the conviction. It therefore follows that a convicted person carries a higher burden of satisfying the court that the interests of justice require that bail be granted pending appeal."*

10. The Court of Appeal in *Balaggan v State* (2102) FJCA 100; AAU 48-2012 (3 December 2102) noted that even if the application is not brought through Section 17(3) of the Bail Act, there may be exceptional circumstances to justify a grant of bail pending appeal.
11. In *Reddy v. State* [2005], the President of the Court of Appeal Justice Calanchini discussed the scope of Section 17(3) of the Bail Act in a comprehensive manner.

*"Once it has been accepted that under the Bill Act there is no presumption in favour of bail for a convicted person appealing against conviction and/or sentence, it is necessary to consider the factors that are relevant to the exercise of the discretion. In the first instance these are set out in section 17 (3) of the Bail*

*Act which states: " When a Court is considering the granting of bail to a person who has appealed against conviction or sentence the Court must take into account:*

- 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 appellant when the appeal is heard."*

*Although Section 17 (3) imposes an obligation on the Court to take into account the three matters listed, the Section does not preclude a Court from taking into account any other matter which it considers to be relevant to the application. It has been well established by cases decided in Fiji that bail pending appeal should only be granted where there are exceptional circumstances.*

*In Apisai Vuniyayawa Tora & Others -V- R (1978) 24 FLR 28, the Court of Appeal emphasized the overriding importance of the exceptional circumstances requirement:*

*"It has been a rule of practice for many years that where an accused person has been tried and convicted of an offence and sentenced to a term of imprisonment, only in exceptional circumstances will he be released on bail during the pending of an appeal."*

*The requirement that an applicant establish exceptional circumstances is significant in two ways. First, exceptional circumstances may be viewed as a matter to be considered in addition to the three factors listed in Section 17 (3) of the Bail Act. Thus, even if an applicant does not bring his application within Section 17 (3), there may be exceptional circumstances which may be sufficient to*

*justify a grant of bail pending appeal. Secondly, exceptional circumstances should be viewed as a factor for the Court to consider when determining the chances of success.*

*This second aspect of exceptional circumstances was discussed by Ward P in Ratu Jope Seniloli & Others –V- The State (Unreported Criminal Appeal No. 41 of 2004 delivered on 23rd August 2004) at page 4:*

*"The likelihood of success has always been a factor the Court has considered in applications for bail pending appeal and Section 17 (3) now enacts that requirement. However, it gives no indication that there has been any change in the manner in which the Court determines the question and the Courts in Fiji have long required a very high likelihood of success. It is not sufficient that the appeal raises arguable points and it is not for the single Judge on an application for bail pending appeal to delve into the actual merits of the appeal. That as was pointed out in Koya's case (Koya –V- The State unreported AAU 11 of 1996 by Tikaram P) is the function of the full Court after hearing full argument and with the advantage of having the trial record before it."*

*It follows that the long standing requirement that bail pending appeal will only be granted in exceptional circumstances is the reason why "the chances of the appeal succeeding" factor in Section 17 (3) has been interpreted by this Court to mean a very high likelihood of success."*

## **Grounds of Appeal**

### **Analysis**

#### **[a]. High Likelihood of Success in the Appeal**

12. The Applicant appeals the conviction and sentence. His grounds of appeal against conviction are substantially based upon the premise that the trial Magistrate had failed to consider and evaluate properly the evidence presented at the trial when he found the Applicant guilty of dangerous driving.
13. The trial Magistrate in his judgment clearly identifies the main issue in dispute that whether the Applicant drove his vehicle in a dangerous manner resulting in the death of the deceased Rajneel Vikash Mani. There was no dispute regarding the identity of the accused, the vehicle involved, date, time and place of the accident.
14. The trial Magistrate has properly analyzed the evidence presented by each witness called by the Prosecution as well as by the Defence and has given reasons why he accepted the evidence presented by the Prosecution and rejected that of the Defence. He has given due consideration to the inconsistencies and the weight to be attached to evidence of each witness.
15. The two eye witnesses called by the Prosecution had travelled in the same vehicle as the accused at the time of the incident. They have stated that the Applicant took over the vehicle in front of them despite there was an oncoming vehicle. They had raised alarm with the Applicant and asked him to slow down as they also saw the oncoming vehicle. Applicant had continued despite the warning and ultimately the vehicle had gone out of control. There is also evidence that the accident had occurred on a rainy day.
16. The trial Magistrate has considered the defence advanced by the Applicant and has given reasons why he found it to be inadequate to create a reasonable doubt in the prosecution case.
17. The Applicant's defence was based on the fact that the vehicle he was driving had a mechanical defect and that he was forced by his foreman to drive.
18. According to the vehicle examiner's report tendered as part of the prosecution case, the

vehicle had no mechanical defect. The report was tendered in by consent and was not challenged by the Applicant. There was no reason why this report should not have been accepted by the trial Magistrate.

19. If the Applicant was aware that the vehicle had a defect, he should have fixed it before the vehicle being taken on road and driven with other passengers. He should have taken precautions as a reasonable and prudent driver and refrained from overtaking another vehicle in a rainy weather condition.
20. The trial Magistrate has given reasons why he rejected the evidence presented by the Applicant and his witness Ashneel Ratnam.
21. Applicant in his grounds of appeal against the sentence states that the sentence learned Magistrate had imposed is harsh and excessive. Applicant has failed to mention specifically where the learned Magistrate went wrong and what wrong principles he had applied in arriving at his sentence.
22. The Applicant has failed to satisfy this Court that his appeal has a very high likelihood of success.

**[b]. The Likely Time before the Appeal Hearing**

23. The Applicant was sentenced on 24<sup>th</sup> May, 2016. Appeal hearing has already been fixed for September, 2016. It will not take too long to dispose of the appeal.

**[c]. The proportion of the original sentence which will have been served by the Applicant when the Appeal is heard**

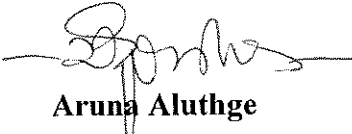
24. The Applicant has served only 3 months out of 24 months. Appeal is already fixed for hearing in September, 2016. The term which will have been served when the appeal is heard is not that long.

25. I am unable to find any exceptional circumstance worthy of consideration in favour of granting of bail.

**Order**

26. The Applicant has failed to satisfy any of the grounds provided in Section 17(3) of the Bail Act or any other ground that can be considered as 'exceptional'. Therefore, application for bail pending appeal is dismissed.



  
**Aruna Aluthge**  
**Judge**

**At Lautoka**

**23<sup>rd</sup> August 2016**

**Solicitors: Aman Ravindra Singh Lawyers for the Applicant**  
**Office of the Director of Public Prosecution for the Respondent**