

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 090 OF 2016S

BETWEEN

**EPARAMA NAGALU**

APPLICANT

AND

**THE STATE**

RESPONDENT

Counsels : Mr. T. Qalinauci for State  
Accused in Person  
Hearing : 10 June, 2016  
Ruling : 23 June, 2016  
Written Reasons : 2 September, 2016

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### WRITTEN REASONS FOR REFUSAL OF BAIL

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1. In Suva High Court Criminal Case No. HAC 019 of 2016S, the applicant (accused) faced the following information:

Count 1

*Statement of Offence*

**AGGRAVATED ROBBERY:** Contrary to section 311 (1), (a) of the Crimes Decree No. 44 of 2009.

*Particulars of Offence*

EPARAMA NAGALU with others, in company of each other on the 3<sup>rd</sup> day of January 2016, at Samabula in the Central Division, stole (FJD) \$100.00 cash, a black wallet containing Fiji and Australia driver's licence, a DODGEE brand mobile phone valued at \$750.00, a silver grey TOYOTA FIELDER vehicle registration number: HW 936 valued at

\$23,000.00, all to the value of \$23,850.00, the properties of **KARUN DUTT** and before such robbery used force on the said **KARUN DUTT**.

**Count 2**

***Statement of Offence***

**AGGRAVATED ROBBERY**: Contrary to section 311(1), (a) of the Crimes Decree No. 44 of 2009.

***Particulars of Offence***

**EPARAMA NAGALU with others**, in company of each other on the 3<sup>rd</sup> day of January 2016, at Nasinu in the Central Division, stole (FJD) \$340.00 cash, the property of **AYSHEAL KUMAR** and before such robbery used force on the said **AYSHEAL KUMAR**.

**Count 3**

***Statement of Offence***

**AGGRAVATED ROBBERY**: Contrary to section 311(1), (a) of the Crimes Decree No. 44 of 2009.

***Particulars of Offence***

**EPARAMA NAGALU with others**, in company of each other on the 6<sup>th</sup> day of January 2016 at Suva in the Central Division, stole \$3000.00 cash the property of **OU CHING HUI** and before such robbery threatened to use a cane knife on the said **OU CHING HUI**.

2. The applicant first appeared in the Suva Magistrate Court on 12 January 2016 on various matters and was remanded in custody. In fact, he had been in custody since then, that is, approximately 7 months 3 weeks ago. On 11 May 2016, he applied for bail. He wrote a letter, asking for bail. The state replied with an affidavit on 3 June 2016. They objected to bail. I heard the parties on 10 June 2016. On 23 June 2016, I denied the applicant's application for bail. I said, I would give my written reasons later. Below are my reasons.
3. It is well settled that an accused person is entitled to bail pending trial, unless the interest of justice requires otherwise. The test for granting bail was whether or not the accused will turn up in court on the date arranged, to take his trial. In deciding the above issue, the court is duty bound, to take into account the factors mentioned in section 19 of the Bail Act 2002.

**Factor No. 1: Likelihood of Accused's Surrendering to Custody:**

4. The accused is 38 years old, married with no children. His wife worked as a Bar tender at a Suva nightclub, while he is self-employed mechanic. He resides in Narere with his wife. I take judicial notice of the substantive file, that is, Suva High Court Criminal Case No. HAC 019/2016. According to the prosecution, they had a strong case against the accused. The accused was found driving the Toyota Fielder Vehicle Registration No. HW 936, which was stolen on 3 January 2016 from the complainant in count no. 1. The same vehicle with two men in it were involved in the robbery in count no. 2. The same vehicle was again used as a getaway vehicle in count no. 3. Two policemen, who knew the accused well, identified him driving the vehicle on 6 January 2016 at 3 am in the morning. If found guilty after trial, the accused faced a possible prison sentence of 14 years and up. Under this head, his chances of bail are slim.

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

5. The accused will be tried from 22 to 26 May 2017. That is approximately 9 months away. He had been in custody since 12 January 2016. That is approximately 7 months 3 weeks ago. So, by trial time, the accused would have been in custody for approximately 1 year 5 months. The court is empowered to hold a person in custody for 2 years prior to trial. In any event, if he's found guilty after trial, time spent in custody while on remand, will be deducted from his final sentence. The accused is now been housed at the new Suva Remand Centre. In Suva High Court Criminal Case No. HAC 031 of 2016S, which is in the consolidated Suva High Court Criminal Case No. HAC 019 of 2016S, the accused waived his right to counsel on 11 February 2016. He choose to represent himself as of today. So, there is no need for any counsel to visit him while in custody. There does not appear to be any need for him to be at liberty for other lawful purpose. He is not incapacitated. Under this head, the accused chances of bail are slim.

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

6. The allegations against the accused are very serious. He is charged with three "aggravated robbery" charges. The maximum penalty is 20 years imprisonment, and the tariff is a sentence between 8 to 16 years imprisonment. Three members of the public were allegedly robbed by the accused, at the material time. The public are sick and tired of violent robberies and it is in the public interest and the protection of the community that, those who allegedly commit these type of offences, be remanded in custody. Although the accused is presumed innocent until proven guilty beyond a reasonable doubt in a court of law, in my view, it is in the interest of

justice 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. It was for the above reasons that I refused the accused's bail application on 23 June 2016.



A handwritten signature in blue ink, consisting of a large, stylized 'S' shape with a loop at the top and a tail that curves to the right.

**Salesi Temo**  
**JUDGE**

Solicitor for State : Office of the Director of Public Prosecution, Suva  
Solicitor for Accused : Accused in Person