

**IN THE HIGH COURT OF FIJI AT SUVA**

In the matter of an application for bail  
pending trial.

**JONE VAKARISE**

**Applicant**

**CASE NO: HAM. 211 of 2017  
(HAC 280/2017)**

**Vs.**

**STATE**

**Respondent**

**Counsel** : Ms. S. Vaniqi for the Applicant  
Mr. E. Samisoni for the Respondent

**Date of Hearing** : 24<sup>th</sup> January 2018

**Date of Ruling** : 23<sup>rd</sup> February 2018

**BAIL RULING**

1. This is the second application for bail pending trial filed before this court. The applicant is charged in HAC 280 of 2017 with one count of arson contrary to section 262(a) of the Crimes Act 2009 ("Crimes Act") and one count of assault causing actual bodily harm contrary to section 275 of the Crimes Act. The offence of arson carries a maximum sentence of life imprisonment.

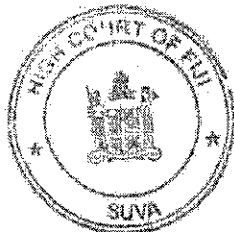
2. The applicant is in remand since 12/09/17. His first application for bail in relation to the same matter was made in the magistrate court and was refused on 13/09/17. The applicant's first bail application filed before this court was refused on 25/10/2017. This court concluded that granting of bail to the applicant would endanger the public interest and make the protection of the community more difficult due to the propensity of the applicant committing arrestable offences based on the facts presented by the respondent.
3. The main point canvassed by the applicant in this application is that the prosecution does not have a strong case against him in the substantive matter HAC 280/2017. This court reached the aforementioned conclusion which led to the refusal of bail in the previous application mainly on the premise that the applicant had allegedly committed the offences he is charged with in the aforementioned case during the operational period of a suspended sentence imposed on him for committing similar offences and also in violation of bail conditions imposed on him in a different case. Therefore the strength of the prosecution case in HAC 280/2017 against the applicant is crucial to the bail determination concerning the applicant.
4. I note that this issue raised by the applicant has not been properly ventilated in the previous applications. Therefore, I considered it appropriate to request the respondent to indicate to this court the strength of the case against the applicant. As the date of the alleged incident is 05/09/17, it would be reasonable to assume that by now all investigations are complete and the prosecution has gathered all the relevant evidence against the applicant in relation to the aforementioned case.
5. After considering the material filed and the submissions made by the counsel for the respondent it appears to me that, on the face of it, the evidence on the identity of the applicant in relation to the two offences he is charged with is rather weak.


6. According to the affidavit filed dated 19/02/18 the respondent does not challenge the position taken by the applicant that the prosecution is heavily relying on the evidence of one particular witness who appear to be the only eye witness in the case. Both the offences the applicant is charged with are allegedly committed by a group and the applicant is identified only by a nickname which according to the applicant is very common.
7. The said affidavit does not point to any other available evince that would establish the identity of the applicant. Moreover, the applicant vehemently denies his involvement in the alleged offences and takes up an *alibi* as a defence.
8. It is also pointed out on behalf of the respondent in the aforementioned affidavit as a new ground of objection that the main witness in HAC 280/2017 has been threatened by an individual named in the said affidavit to withdraw the case against the applicant.
9. However, upon perusing the relevant statement given by the aforementioned witness which was annexed to the affidavit and having heard the submissions of the counsel for the respondent I find that the respondent's claim regarding the complainant's involvement in that alleged threat is based on a mere speculation.
10. All in all, I am no longer convinced that the applicant should be denied bail in relation to the aforementioned case HAC 280 of 2017.
11. Therefore, the applicant is granted bail subject to the following conditions;

The applicant should;

- a) sign a personal surety bond of \$ 1000;
- b) appear in case No. HAC 280 of 2017 on every court date;

- c) not commit any offence whilst on bail;
  - d) provide clear details of his residential address and reside at that address until the conclusion of the case, No. HAC 280 of 2017;
  - e) not change the aforementioned address provided to court without the leave of the court;
  - f) not interfere with prosecution witnesses either directly or indirectly;
  - g) surrender all travel documents to court or if he does not have any travel document, then should not apply for any travel document;
  - h) not leave the Viti Levu without the leave of court;
  - i) report to a police station as directed by court on every Wednesday between 6.00am and 6.00pm, commencing from 28/02/2018;
  - j) remain at home curfewed daily between 7.30pm and 5.30am the following day; and
  - k) provide two sureties acceptable to court and each surety to sign a bond of \$1000 to ensure that the applicant complies with his bail undertaking.
12. The applicant is warned that his failure to appear in court may lead to the trial in case No. HAC 280 of 2017 taking place in his absence in addition to any other criminal sanction warranted by such conduct.



  
Vincent S. Perera  
**JUDGE**

**Solicitor for the Applicant : Vaniqi Lawyers, Suva.**  
**Solicitors for the State : Office of the Director of Public Prosecutions, Suva.**