

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL MISC NO. HAM 190 OF 2023

BETWEEN : **SANITA LAQENASICI**
SEMISI NADAKU

AND : **STATE**

Counsel : Mr T Varinava for both the Applicants
Ms M Konrote for the State

Date of Hearing : **5 July 2023**

Date of Ruling : **12 July 2023**

RULING

- [1] The applicants seek bail pending appeal against their conviction and sentence.
- [2] Following a trial in the Magistrates' Court at Nasinu, the applicants with two others were convicted on a charge of sexual assault, and on 8 August 2022, sentenced to 4 years imprisonment. Although they are represented by counsel, they made their applications for bail pending appeal in person.
- [3] Section 17 (3) of the Bail Act 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 applicant when the appeal is heard.

- [4] The records of the trial proceedings have been filed and the court is in a position to fix the appeal for hearing at any time now. By the time the appeal is heard the applicants will have served about a third of their sentence.
- [5] The ground upon which the application for bail is based relates to sufficiency of evidence to support the conviction for sexual assault. The case against the applicants were that they were part of a joint enterprise to physically assault the complainant and that the offence of sexual assault was a probable consequence of the physical assault. The incriminating evidence against the applicants came from the complainant and a witness to the assault.
- [6] Following the conviction, the presumption of bail is displaced. Bail is granted to a convicted prisoner only in exceptional circumstances, considered together with the factors set out in section 17 (3) of the Bail Act (*Silatolu v The State*, Criminal Appeal No. AAU0024 of 2003).
- [7] In determining the likelihood of success, the court will only grant bail in a case where the appeal has a very high chance of success.
- [8] Having considered the requirements of Section 17(3) of the Bail Act, I do not consider this is a proper case for the grant of bail pending appeal. There are no exceptional circumstances and the applications for bail pending appeal must be refused.

[9] The applications are refused.



A handwritten signature in black ink, appearing to be "D. Goundar", written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State
Legal Aid Commission for both the Applicants