IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL APPEAL NO. HAA 056 OF 2025

BETWEEN	:	**JAMES ASHWIN RAJ**
AND	:	**STATE**
Counsel	:	**Appellant in Person** **Ms N Ali for the State**
Date of Judgment	:	**26 January 2026**

JUDGMENT

Introduction

[1] The appellant appeals under section 31(1) of the Bail Act 2002 against the decision of Senior Resident Magistrate Sufia Hamza dated 16 October 2025 refusing him bail in Extended Jurisdiction Criminal Case No. EJ 31 of 2025. The learned Magistrate found that it was highly likely that the appellant would not surrender to custody or appear in court if released on bail.

[2] The appellant, who appeared in person both in the court below and in this court, challenges the ruling and seeks his release on bail pending trial. In the alternative, he complains of delay and requests that his trial be expedited.

Background

[3] The appellant is charged in the Magistrates' Court at Suva with one count of Aggravated Burglary contrary to section 313(1)(a) and one count of Theft contrary to section 291(1) of the Crimes Act 2009. The allegation is that on 22 April 2025, while in company with another, he broke into the Arya Samaj Head Office in Samabula and committed theft therein.

[4] He was arrested on 28 April 2025 and has remained on remand since. He filed a written bail application in the Magistrates' Court, essentially alleging an improper police investigation. The State opposed bail on the basis of: (a) three previous convictions for the forfeiture of bail bond; (b) one conviction for giving a false name to a police officer; (c) the seriousness of the present offences; and (d) a total of 28 previous convictions.

[5] After hearing submissions, the learned Magistrate refused bail, finding that the appellant was not entitled to be released because it was highly likely he would not surrender to custody or appear in court to answer the charges.

[6] On 3 December 2025, the appellant invoked the jurisdiction of this court to challenge the ruling. In his letter of appeal, he complains that he has been on remand for seven months, that the prosecution case rests on circumstantial CCTV evidence which he says is unreliable, and that continued remand causes hardship to his five children. He again seeks bail or, failing that, a speedy trial.

Law and test on a bail appeal

[7] Section 3 of the Bail Act 2002 provides that every accused person has a right to be released on bail unless it is not in the interests of justice for bail to be granted, and that there is a presumption in favour of granting bail, which may be rebutted.

[8] Section 19(1) of the Bail Act provides that an accused person must be granted bail unless, in the opinion of the court:

(a) the accused is unlikely to surrender to custody and appear in court to answer the charges laid; or

(b) the interests of the accused will not be served through the granting of bail; or

(c) granting bail would endanger the public interest or make the protection of the community more difficult.

7. In forming that opinion, section 19(2) requires the court to have regard to all relevant circumstances and, in particular, to:

- the accused's background, community ties and previous criminal history;
- any previous failures to surrender or to observe bail conditions;
- the seriousness of the offence, strength of the prosecution case and likely penalty;
- the length and conditions of custody, and the need to prepare a defence; and
- the likelihood of interference with evidence or further offending while on bail.
-

[8] In *Wakaniyasi v State* FJHC 20; HAM 120.2009, it was held that the three grounds in section 19(1) are disjunctive: all three need not exist to justify refusal of bail; the existence of any one ground is sufficient. In *State v Tuimouta* FJHC 177; HAC 078.2008, it was emphasised that a bail hearing is not a trial: the prosecution bears the burden, on the balance of probabilities, to rebut the presumption in favour of bail by establishing one or more of the statutory grounds.

[8] Appeals against bail decisions are governed by section 31 of the Bail Act 2002. Section 31(1) provides that all grants and refusals of bail, and all orders and conditions, are appealable to the High Court. Under section 31(2)(b), on such an appeal the High Court may confirm, reverse or vary the decision appealed from.

[9] The nature of this court's function on a bail appeal is settled. The High Court does not conduct a rehearing; it reviews the exercise of discretion by the lower court. The appeal will be allowed only if the magistrate:

(a) applied the wrong legal principles;
(b) failed to consider relevant matters;
(c) took into account irrelevant matters; or
(d) reached a decision that is plainly wrong or unsupported by the facts.

[10] By contrast, section 30 of the Bail Act 2002 provides for a review of a bail decision, which is a rehearing at which the High Court may receive evidence and consider bail afresh. The appellant in this case has proceeded by way of appeal under section 31, not by review under section 30, and this court is therefore confined to examining whether the learned Magistrate erred in the exercise of discretion.

The Appellant's Grounds

[11] The appellant's written appeal does not identify any specific error of law or fact on the part of the learned Magistrate. He does not allege that she misdirected herself on section 19, ignored relevant factors, or relied on irrelevant matters. Instead, he advances three broad complaints:

a) that he has been on remand for about seven months and has been repeatedly refused bail;

b) that the prosecution case is based only on circumstantial CCTV evidence which he claims is not supported and "may be true but not literally true"; and

c) that continued detention causes hardship to his five children, whose welfare he says he should be providing as their father.

[12] The first and third matters concern the length of time in custody and personal hardship, which are relevant under section 19(2)(b) when considering the interests of the accused person and the need to remain at liberty for lawful purposes such as the care of dependants. The second matter goes primarily to the strength and admissibility of the prosecution evidence, which is ordinarily a matter for the trial court to determine.

Discussion

[13] In her ruling the learned Magistrate, correctly identified the charges and summarized the State's objections: three previous convictions for the forfeiture of bail bond, one conviction for giving a false name to a police officer, the seriousness of the present offences, and 28 prior convictions. She then set out section 3 and section 19 of the Bail Act and referred to the relevant authorities, including *Wakaniyasi v State* [2010] FJHC 20 and *Manoa v State* HAM095 of 2010 regarding the grounds on which bail may be refused and the relevance of further offending while on bail.

[14] Having done so, she concluded that, in light of the appellant's criminal history and the statutory test, he was not entitled to be released on bail because it was highly likely that he would fail to surrender to custody or appear in court to answer the charges. That conclusion was squarely anchored in section 19(1)(a) and section 19(2), particularly the appellant's previous failures to observe bail conditions and his extensive conviction history.

[15] On the material before this court, there is no dispute that the appellant has multiple prior convictions, including for the forfeiture of bail bond. A conviction for forfeiture of bail bond is direct and cogent evidence that the appellant has previously breached bail undertakings. Section 19(2)(a)(ii) and section 19(2)(c)(i) expressly require the court to consider previous failures to surrender to custody or to observe bail conditions when assessing both flight risk and the public interest.

[16] In those circumstances, it cannot be said that the learned Magistrate erred in principle in treating the appellant's bail history and criminal record as powerful indicators that he is unlikely to comply with future bail conditions or attend court as required. Indeed, to ignore such history would itself be an error.

[17] The appellant's argument that the prosecution case rests on circumstantial CCTV evidence, and that such evidence is weak or unsupported, does not demonstrate any error in the Magistrate's approach. At the bail stage the court is not conducting a mini-trial or ruling on admissibility. The "strength of the prosecution case" in section 19(2)(a)(iv) requires only a broad evaluation of whether the case appears weak or strong on the information available, not a final determination of evidential issues. Any challenge to the admissibility or reliability of CCTV footage will be a matter for determination for the trial court.

[18] Nor does the appellant's reliance on the length of his remand and the hardship to his five children identify any misdirection by the Magistrate. Those are relevant considerations under section 19(2)(b), but they must be balanced against the risk factors and the public interest in the protection of the community. In a case where the accused has a history of breaching bail and numerous prior convictions, including for offences of dishonesty and violence, a Magistrate is entitled to give greater weight to the risk of non-appearance and further offending than to personal hardship, however genuine.

[19] The respondent's submissions in this court emphasize that the appellant's criminal history is not only extensive but escalating, progressing from theft to violence and serious robbery, through to manslaughter, and continuing with recent burglary and aggravated burglary. That pattern, coupled with three convictions for the forfeiture of bail bond, supports the conclusion that he poses a real risk of further offending and of failing to comply with court orders if released. The Magistrate was entitled to regard that pattern as highly significant.

[20] The appellant also complains that he has been remanded for seven months. The length of time in custody before trial is an important factor, and trial courts must ensure that accused persons are tried within a reasonable time. However, delay in itself does not establish that a prior bail decision was wrong in law or in principle. The question on this appeal is whether the Magistrate erred on the material before her when she made her ruling on 16 October 2025. On the record, she applied the correct statutory provisions, considered the relevant factors, and reached a conclusion that was reasonably open to her.

[21] If the appellant now wishes to rely on subsequent delay or changed circumstances in support of a fresh application for bail, the proper course is to apply again in the Magistrates' Court, or, if appropriate, seek a review under section 30 of the Bail Act. A section 31 appeal is not a vehicle to re-argue bail on new factual grounds; it is confined to correcting error in the decision already made.

[22] In the present case, the appellant has not demonstrated that the learned Magistrate misapplied section 19, ignored any mandatory consideration, took into account irrelevant matters, or reached a plainly unreasonable conclusion. On the contrary, her ruling reflects a correct understanding of the Bail Act and established authority, and her conclusion that the appellant is unlikely to

surrender to custody or appear is supported by the appellant's own history. The threshold for appellate intervention has not been met.

Result

[23] The appeal against the decision of Senior Resident Magistrate Sufia Hamza dated 16 October 2025 refusing bail is dismissed. The order refusing bail is affirmed.

[24] The appellant will remain on remand pending trial in the Magistrates' Court. In light of the period already spent in custody, the Magistrates' Court is encouraged to give this matter appropriate priority so that the appellant's trial may proceed without undue delay.

....

Hon. Mr Justice Daniel Goundar

<u>Solicitors</u>:

Appellant in Person

Office of the Director of Public Prosecutions for the State