

**IN THE RESIDENT MAGISTRATES COURT
AT SIGATOKA - CRIMINAL JURISDICTION**

Criminal File Nos: 574 & 575/18

BETWEEN : State

Prosecution

AND : Sachida Nand Sami

Accused

Appearances

For the State : Inspector M.S. Hassan

For the Accused : In-person

Date of Ruling : 4th January 2019

BAIL RULING

Background

1. The Applicant seeks to be released on bail pending trial.
2. Prosecution has objected on the basis that he has previous convictions for breach of bail condition as well as the current charges he faces.
3. As such the accused should be remanded as a result of public interest.

The Law

4. Fundamentally Section 9 of the ***Republic of Fiji Constitution 2013*** grants to all citizens the right of personal liberty.
5. Section 13 (1) (h) of the ***Republic of Fiji Constitution 2013*** is authority for the view that an arrested person must be released on bail unless the interests of Justice otherwise require.
6. Section 3(1) of the *Bail Act 2002* states as follows:

"Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted"

7. The presumption of bail is rebuttable as per Section 3(4) of the Bail Act on the following grounds:

(a) The person seeking bail has previously breached a bail undertaking or bail condition; or

(b) The person has been convicted and has appealed against the conviction.

(c) the person has been charged with a domestic violence offence.

8. In ***State v Singh*** (2010) FJHC 600; HAM 187. 2010 (2 September 2010) the Court observed:

"[2] The principles governing bail pending trial are contained in the Bail Act. Section 3(1) provides that an accused has the right to be released on bail unless it is not in the interests of justice that bail should be granted. Consistent with this right, section 3(3) of the Act declares that there is a presumption in favour of the granting of bail to an accused, but a person who opposes the granting of bail may seek to rebut the presumption. In determining whether a presumption is rebutted, the primary consideration in deciding whether to grant bail is the likelihood of the accused appearing in court to answer the charges against him. Bail can be opposed on three grounds provided by section 19(1) of the Act. Section 19(1) provides for three grounds for refusing bail. Section 19 (2) sets out a series of considerations the court must take into account in determining the three grounds. In broad terms, bail can be refused if the accused is a flight risk or if it is not in the accused's interest to be released on bail or it is not in the public interest to release an accused on bail."

9. Therefore this court holds the view that bail should only be refused if upon the presumption of bail being rebutted there is evidence of a risk of the Applicant not appearing in court or whether it's not in the interests of justice to grant the same.

Discussion

10. The Court finds that the presumption of bail has not been rebutted as the conviction for breach of bail was more than 10 years ago.
11. As such the court shall grant bail to the accused on the following conditions:
- Cash bail of \$500.00;
 - He must produce one surety suitable to the court;
 - The surety shall be bonded in the sum of \$500.00;

- A stop departure order is also issued against the accused;
- All other standard bail conditions shall apply.

12. 28 days to appeal.

