

IN THE RESIDENT MAGISTRATES COURT
SUVA

Criminal File No: 548/2023

BETWEEN : STATE

Prosecution/Respondent

AND : AIYAZ SAYED-KHAIYUM

Accused /Applicant

Appearances

For Prosecution : Ms. Rice (ODPP)

For the Accused : Mr. D. Sharma & Ms. G. Fatima

(R.Patel Lawyers)

Date of Ruling : 13th September 2023

BAIL RULING

1. The accused has been charged with one count of Abuse of Office contrary to Section 139 of the **Crimes Act 2009**.
2. He was granted bail on the 2nd of May 2023 where one of the conditions of his bail was a 'Stop Departure Order' limiting his ability to travel outside the jurisdiction of the Fiji Courts.
3. He has now filed an application seeking leave to be allowed to travel to Singapore for medical review/checkup and then to Australia for what appears to be a client conference.
4. All of the above would be completed prior to the mention date on 27th October 2023.
5. The State has objected on the basis inter alia that there is an inherent risk that the accused shall not return.

6. Article 13 (1) of the **Fiji Constitution** states:

Every person who is arrested or detained has the right

(h) to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require;

7. As per section 30(8) of the [Bail Act 2002](#) a Magistrate can only review or vary the existing bail condition upon receiving an application.
8. An application for variation of bail conditions has been filed.
9. In determining an application for variation of bail conditions, this court is expected to exercise its discretion and is required to consider the relevant provisions set out in the [Bail Act 2002](#).
10. The primary purpose of imposing conditions is to ensure the accused's attendance in court to face his trial. This has been enunciated in legislation that is Section 17(2) of the **Bail Act** and also case law that is **State v Tunidau** [2003] FJHC 188; HAM0001.2003S (1 January 2003) and **State v Singh** [2010]FJHC 600; HAM187.2010
11. The court has had the benefit of reading the Affidavit of the Applicant, the Affidavit filed in opposition to the Application and the submissions filed.
12. In **State v Tuimoata** [2008] FJHC 177;HAC078.2008 (18 August 2008) it was established that the burden of proof is carried by Prosecution on a balance of probabilities.
13. Prosecution has objected to the application as intimated by learned counsel appearing for the State,

on the basis of a 'flight risk', or in other words 'the fear that the applicant will not return'.

14. However, the Affidavit filed in opposition by the State does not address the 'flight risk' issue. In fact, it does not even address the other issues which were raised in their submissions opposing the Application.
15. Affidavit evidence is important for the court to make a proper finding as enunciated in the decisions such as **Roneel Prasad v The State**, Criminal Case HAM462 of 2012 and **Shiri Krishna Rao v The State** Cr. Misc Case No. HAM 463/2013 (LTK).
16. Be that as it may, what is established from the Affidavit filed by the State is the fact that the Applicant has one (1) property listed under his personal name and two (2) properties listed under companies which the Applicant is a Director and shareholder of. Those companies as highlighted in the Affidavit filed by the State have healthy bank balances.
17. The Affidavit of the Applicant expands on reasons that the Applicant shall return which includes but is not limited to the fact that his spouse, children and extended family reside in Fiji and his law firm operates out of Nadi, Fiji.
18. In the courts view, this highlights that there are family, business and financial interests in Fiji for the Applicant which would require him to return.
19. Noting that there is every reason for the Applicant to return, are there sufficient reasons to vary his bail conditions to allow him to travel out of jurisdiction.
20. The case authorities cited, that is, **Sitiveni Ligamamada Rabuka v State** (Misc Case No. HAM 62 of

2006); **State v Ratu Jope Seniloli** (HAM0029 of 2004); **Hank Arts v State** (HAM 204 of 2016); **Hank Arts v State** (AAU 6 of 2017) and **Qarase v Fiji Independent Commission Against Corruption** [2009] FJHC 146; HAM038.2009 (22 July 2009) indicate that out of jurisdiction travel should only be allowed if the reasons are "essential and imperative"

21. The Affidavit of the Applicant has attached correspondences from the medical facility in Singapore highlighting the medical procedures which is required by the applicant. This as per the tone of the correspondence is insisted by the medical facility.
22. In **Ratu Jope Seniloli's** case (supra) the court allowed him to travel out of jurisdiction for medical reasons. Similarly on the same token the court views the applicant's position as requiring travel for medical reasons and this falls under essential and imperative reasons. The onward travel to Australia may not be essential but it is imperative for socio-economic reasons.
23. There are no compelling reasons provided by the State in their Affidavit to dissuade the court from the above finding.
24. As such considering the above, this court has no hesitation in granting the Application as sought.
25. Bail is varied and as a result the following orders shall apply:
 - i. The Fiji Passport of the Applicant shall be released to him at 2pm today (13/9/23) and must be returned to the Criminal Registry of the Suva Magistrates Court on or before 26th October 2023;

- ii. The stop departure order issued on 2nd May 2023 shall be temporarily uplifted with immediate effect and shall be reinstated on 26th October 2023;
- iii. The applicant's reporting condition for the month of September 2023 is waived, however the applicant is required to re-commence signing at the Namaka Police Station from October 2023.
- iv. The requirement for permanent residence at 1 Mount St. Mary's Crescent, Martintar, Nadi shall be waived for the period 13th September 2023 to 26th October 2023 and shall recommence thereafter.

26. The court so orders.


JEREMAI N.L SAVOCA
Resident Magistrate

