

**IN THE MAGISTRATES' COURT
AT BA
CRIMINAL JURISDICTION**

Criminal Case No.431/2025

BETWEEN: STATE

PROSECUTION

AND: FIROZ KHAN

ACCUSED

Counsel: WCPL 4897 Venu Singh for Police Prosecution
Mr. M. Yunus for the Accused.

Date of Ruling: 12 December 2025.

BAIL RULING

INTRODUCTION

1. Mr. Firoz Khan ('the Accused'), has been charged with 2 counts of Unlawful Possession of Illicit Drugs contrary to section 5(a) of the Illicit Drugs Control Act 2004 with 1 count being for possession of methamphetamine and 1 count being for possession of cannabis sativa and 4 counts of Breach of Bail Condition contrary to section 25(1)(b) and 26(1) of the Bail Act 2002 and Bail Amendment Act 2012.
2. On 4 November 2025, a Motion and Affidavit was filed on behalf of the Accused seeking an order for bail. The Accused's grounds for seeking bail are:
 - i. Presumption of Innocence;
 - ii. Has no absconded bail;
 - iii. Married with 2 children;
 - iv. Children will suffer if bail is not granted;
 - v. Sole breadwinner;
 - vi. Has 2 sureties;
 - vii. I have fixed address;
 - viii. Seeking stringent bail conditions with reporting conditions and travel restrictions;
and
 - ix. Willing to pay cash bail in the sum of \$2,000.00.
3. On 24 October 2025, the First Call date for this matter, Prosecution informed the Court that it would be objecting to the Accused's bail on the following grounds:
 - i. The Accused has 3 other files where the charges are similar herein – 2 files in Ba and 1 file in Rakiraki;
 - ii. This case is of national interest considering that the drugs allegedly found in the Accused's possession is hard drugs – methamphetamine;
 - iii. Accused has shown that there is a likelihood of him re-offending considering that he is on bail in matters before the Court; and
 - iv. Accused is alleged to have breached bail;

4. Upon the formal application for bail being filed, Prosecution filed the Affidavit of Detective Constable 5280 Qata on 9 December 2025 wherein the above objections raised on 24 October 2025 were reiterated.
5. The pending matters which Prosecution are referring to and for which the Accused is on bail are as follows:
 - i. Rakiraki CF 29/24 – 1 count of Unlawful Possession of Illicit Drugs.
 - ii. Ba TR 31/24 – 1 count of Dangerous Driving Occasioning Grievous Bodily Harm & 1 count of Breach of Bail Condition.
 - iii. Ba CF 431/24 – 1 count of Unlawful Possession of Illicit Drugs (methamphetamine), 1 count of Unlawful Possession of Illicit Drugs (cannabis sativa) & 2 counts of Breach of Bail Condition.
 - iv. Ba CF 114/25 – 1 count of Unlawful Possession of Illicit Drugs (methamphetamine), 1 count of Serious Assault & 3 counts of Breach of Bail Condition.
6. The Accused's counsel submits that merely have matters pending in Court is not a basis on which the Court ought to refuse bail especially as the Accused has never previously absconded bail.
7. Both Prosecution and Counsel for the Accused filed comprehensive written submissions regarding this application and for this the Court is grateful.
8. Having considered the application filed in conjunction with the objections raised and the submissions filed, I now pronounce my Ruling.

Law regarding Bail

9. According to Article 13(1)(h) of the Constitution of the Republic of Fiji, "*every person who is arrested or detained has the right to be released on reasonable terms and conditions, pending a charge or trial, unless the interest of justice otherwise require*".
10. Section 17(2) of the Bail Act 2002 ('the Act') states "*[t]he primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her*".
11. Section 3(1) and (3) of the Act states "*[e]very accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted*" and "*[t]here is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption*".
12. Section 3(4) of the Act follows that the presumption in favour of granting bail is displaced where –
 - (a) *the person seeking bail has previously breached a bail undertaking or bail condition;*
 - (b) *the person has been convicted and has appealed against the conviction; or*
 - (c) *the person has been charged with a domestic violence offence.*

13. The presumption to bail in this case has been displaced pursuant to section 3(4)(a) of the Bail Act 2012 as it is taken that the Accused had breached a bail undertaking or bail condition by being arrested herein with an arrestable offence similar to the offences in Rakiraki CF 29/24, Ba CF 431/24 and Ba CF 114/25 (vide para 16 of *Naicker v State; Criminal Miscellaneous Case No. HAM 134 of 2015 (18 September 2015)*).
14. Whilst the presumption to bail has been displaced, the Court is mindful of the right to be released on bail under section 3(1) of the Bail Act unless it is not in the interest of justice.
15. Section 19(1) of the Act states that an accused must be granted bail unless in the opinion of the police officer or the court, as the case may be-
 - a. *the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;*
 - b. *the interests of the accused person will not be served through the granting of bail;*
 - c. *granting bail to the accused person would endanger the public interest or make the protection of the community more difficult; or*
 - d. *the accused is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted.*
16. Section 19(2)(c) of the Act has given factors that should be considered in determining how the granting of bail to an accused person would endanger the public interest or make the protection of the community more difficult
17. As mentioned in paragraph 13 herein, the Accused is now before the Court for a similar offending as in Rakiraki CF 29/24, Ba CF 431/24 and Ba CF 114/25 for which he was already on bail.
18. The Accused was granted bail in Ba CF 114/25 on 11 April 2025 pursuant to a Bail Ruling with the following conditions:
 - i. \$1,000.00 cash bail bond;
 - ii. Aklesh Naidu & Pranil Kumar accepted as sureties and bonded to the same amount;
 - iii. Not to re-offend;
 - iv. Not to interfere with Prosecution witnesses;
 - v. Continue to reside at Maruru, Ba and not relocate without the permission of the Court;
 - vi. Report to Ba Police Station every Saturday between 7am to 5pm commencing from 12 April 2025; and
 - vii. Remain indoors daily between 6pm-6am.
19. Moreover, the Court takes judicial notice of the following:
 - i. The Accused was granted bail in Ba TR 31/24 on 27 September 2024 with a non-cash bail and 2 sureties.
 - ii. He was then charged and produced in Court for Ba CF 431/24 wherein the alleged offending date is 17 October 2024 and he was granted bail on 5 November 2024 with a non-cash bail and 2 sureties.

- iii. The Accused was then charged and produced in Court for Ba CF 114/25 where the alleged offending date is 6 March 2025 and he was granted bail on 11 April 2025 with cash bail and 2 sureties.
20. Given that there has been a lapse of 6 months from when the Accused was granted bail to when the alleged incident herein took place, the Court is satisfied that there is a real likelihood of the Accused committing further arrestable offences should the Court grant him bail (vide **State v Tuilagi** [2008] FJHC 317; HAC 069.2008 (13 November 2008) and **Williams v State** Criminal Misc. Case No. HAM 079/2008 (8 October 2008) as cited in **Kumar v State** Criminal Miscellaneous Case No. HAM 211 of 2016 (7 February 2017)).
21. Further, the Court acknowledges that there are safeguards available that can be imposed on an accused such as:
- i. Imposing strict bail conditions such as restrictions on the accused's movement and reporting conditions until the completion of the matter in court.
 - ii. Imposing a cash bail bond which will be forfeited if the accused absconds bail or is arrested for breaching bail conditions.
 - iii. Having sureties that can control and monitor the accused and held answerable if an accused absconds or breaches his/her bail conditions.
22. However, these safeguards, have already been imposed on the Accused in his previous matters and it is evident that such safeguards are of no consequence to the Accused given that he is now before the Court again and he is requesting for these safeguards to be imposed again.
23. As such, the Court finds that granting the Accused bail is not in the interest of the public given that he has failed to observe bail conditions and because there is a real likelihood of the Accused committing further arrestable offences if released on bail.

Determination

24. The Accused's application for bail filed on 4 November 2025 is refused.
25. Any party aggrieved with this decision has a right to appeal or apply for a review.



N. Mishra
Resident Magistrate