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**IN THE COURT OF APPEAL, FIJI ISLANDS**  
**ON APPEAL FROM THE HIGH COURT OF FIJI**

**APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.: AAU0060 OF 2008**  
**HIGH COURT CRIMINAL CASE NO.: HAC 006 OF 2005(L)**

**BETWEEN:**

**TAFIZUL RAHIMAN**

**-APPLICANT-**

**AND:**

**THE STATE**

**-RESPONDENT-**

**Counsel:** Mr. A.K. Singh for the Applicant  
Mr. P. Bulamainavalu for the State

**Date of Hearing:** Monday 14<sup>th</sup> July, 2008  
**Date of Ruling:** Friday 18<sup>th</sup> July, 2008

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**RULING**

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- [1] This is an application for bail pending appeal.
- [2] On 20 May 2008, following a trial in the High Court at Lautoka, the applicant was convicted for the murder of his wife and sentenced to life imprisonment. The

principle evidence against him was his confessional statement to the police, which the trial judge admitted in evidence after conducting a trial within trial.

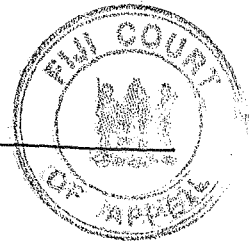
- [3] The appeal against conviction is advanced on the following grounds:
- (i) That the learned trial Judge erred in law when he failed to exclude the confession of the appellant that was not voluntary or was taken in breach of the 1997 Fiji Constitution.
  - (ii) That the learned trial Judge erred in law when he allowed the prosecution to put evidence of the appellant that came out of the *voire dire* in front of the assessors and or failed thereafter to declare the trial as mistrial.
  - (iii) That the learned trial Judge erred in law when he directed the assessors as “he then admitted that earlier trial (the *voire dire* about which I explained to you) he had mention going to the hospital only once during the interview” and thereby causing miscarriage of justice.
  - (iv) That the learned Judge erred in law by not directing the assessors on the question of joint enterprise.
  - (v) That the learned trial Judge erred in law when he directed the assessors on inconsistencies in their evidence taking into consideration the evidence coming out of the *voire dire* and thereby causing miscarriage of justice.
- [4] At the hearing of the application, counsel for the applicant pressed his submissions on grounds two and three, citing authorities ***R v Brophy*** [1981] 2 All ER 705, ***Wong Kam-Ming v R*** [1979] 69 Crim. App. R 47, and ***Ng Chun-Kwan v R*** [1974] HKLR 319.
- [5] An application for bail pending appeal is governed by the Bail Act 2002. Section 17(3) provides:
- “(3) 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."

- [6] As far as the first limb of Section 17(3) is concerned, the test is stringent. The test is that the appeal must demonstrate every chance of success (*Seniloli and Others v State* AAU0041/2004).
- [7] The second and third limbs are irrelevant because the applicant is serving life imprisonment.
- [8] Having read the authorities cited by the applicant and the trial judge's summing up, I am satisfied that the applicant has not demonstrated that the grounds of appeal have every chance of success.
- [9] Furthermore, there are no exceptional circumstances and the application for bail pending appeal must be refused. However, leave to appeal pursuant to section 21 of the Court of Appeal Act is granted.



**Daniel Goundar**  
**JUDGE OF APPEAL**



**At Suva**  
**Friday 18<sup>th</sup> July, 2008**

**Solicitors:**

Messrs A.K. Singh Law, Nausori for the Applicant  
Office of the Director of Public Prosecutions, Suva for the State