

IN THE COURT OF APPEAL, FIJI
AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL NO: AAU0012 OF 2010

HIGH COURT CRIMINAL CASE NO: HAC 001 OF 2009

BETWEEN: **JASWANT KUMAR**

APPELLANT

AND: **FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION**

RESPONDENT

Counsel: Appellant - Mr R. Chaudhary
Respondent - Ms. L Lagilevu

Date of Hearing: 19th March, 2010.

Date of Ruling: 26th March, 2010

R U L I N G

- [1] This is an application for bail pending appeal. There are seven grounds of appeal against the conviction and two against sentence.
- [2] The accused was found guilty of abuse of office as charged in Count No. 1. He was convicted of felony under Section 111 of the Penal Code.

[3] In terms of Section 3(4) of the Bail Act the presumption of granting of bail is displaced and therefore Section 17(3) applies to this application. Section 17(3) of the bail act is as follows:

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.***

[4] The 1st is the likelihood of success in the appeal. The grounds of appeal certainly raise arguable points. But that is not sufficient. In bail pending appeal cases appeal must show every chance of success.

[5] The Counsel for Appellant submits that the accused appellant was convicted for a higher offence than he was charged as personal gain was never evident. However even if the appeal is successful, that does not necessarily mean an acquittal. The court will have a number of alternatives open to if the conviction is overturned as mentioned in ***Seremaia Balelala v The State Cr Appeal No. AAU 0003/2004S.***

Although the appeal grounds are arguable I cannot accept this appeal shows every chance of success.

[6] The likely time before the appeal hearing and the proportion of the original sentence which will have been served by the appellant when appeal is heard can be dealt with together.

The appellant was sentenced on 2nd March 2010 to a term of 12 months imprisonment and appeal may be listed for hearing latest in the next session of Court of Appeal approximately in June 2010. Therefore applicant would not have served a substantial portion of his sentence before his appeal is heard.


"At the same time it must be borne in mind that some delay in hearing of appeal is inevitable. Generally delay in hearing should not be looked at in isolation" **Amina Koya v The State Crim Appeal No. AAU 11/1996s (1996).**

"The granting of bail pending appeal is entirely discretionary. The court will grant bail only in exceptional cases" **Mark Mutch v The State Cr App. No. AAU 0060/1999.**

The appellant has not been able to demonstrate exceptional circumstances justifying a grant of bail.

In the above premise the application is refused.




Priyantha Fernando
Puisne Judge
26/03/2010.