

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

CRIMINAL APPEAL NO. AAU 13 OF 2019
(High Court HAM 47 of 2018)

BETWEEN : RAMESH CHAND

Appellant

AND : THE STATE

Respondent

Coram : Calanchini P

Counsel : Mr J Vulakouvaki for the Appellant
Mr R Kumar for the Respondent

Date of Hearing : 29 March 2019

Date of Ruling : 24 May 2019

RULING

- [1] By motion dated 8 February 2019 the appellant in effect applied for leave to appeal the refusal by the High Court to grant bail pending trial pursuant to section 21(3) of the Court of Appeal Act 1949 (the Act).

- [2] Section 35(1) of the Act gives to a judge of the Court of Appeal power to grant leave. The application was supported by an affidavit sworn on 12 February 2019 by the appellant. The application was opposed by the Respondent.
- [3] At the time of the application for bail pending trial in the High Court the appellant was charged with the indictable offence of acting with intent to cause grievous harm. The offence occurred within a domestic violence context. The application for bail pending trial was opposed. The High Court refused the application on the grounds that (a) there was the possibility of interfering with witnesses and in particular the complainant, (b) there was a breach of a domestic violence restraining order and (c) the offence was a serious offence with a maximum penalty of imprisonment of life.
- [4] The application for leave to appeal was listed for mention on 22 February 2019. On that day directions were given for the filing and serving of affidavit material and written submissions with the directions that they not be acted upon until the next mention on 29 March 2019. This was to enable the parties to ascertain the trial date. On that day the Court was informed that the trial was fixed for 23 – 24 April 2019. Although Counsel for the appellant appeared there was no appearance by the appellant who was detained in Labasa.
- [5] As the trial was to commence in less than one month and as the Court of Appeal's next session was to commence in May the appeal was unlikely to be finalized prior to the trial. As a result the Court is left with no choice but to dismiss the appeal under section 35(2) of the Court of Appeal Act.

Order:

Appeal dismissed under section 35(2) of the Court of Appeal Act.



W. Calanchini
Hon Mr Justice W D Calanchini
PRESIDENT, COURT OF APPEAL