

IN THE HIGH COURT OF FIJI  
AT SUVA  
MISCELLANEOUS JURISDICTION

Misc. Case No: HAM 024 of 2008

Between:                   SASHI RUDRA SINGH                   Applicant  
  
And:                         THE STATE                                   Respondent

Hearing: 18<sup>th</sup> March 2008  
Ruling: 20<sup>th</sup> March 2008

Counsel: Mr. D. Prasad for Applicant  
          Mr. A. Rayawa for State

RULING

This is an application for variation of bail, to allow the Applicant to travel to New Zealand and to work there pending his trial. The trial is due to commence on 1<sup>st</sup> of August 2008.

The grounds, on which the application is made, are set out in the affidavit of the Applicant. Since June 2007 he has held a work visa for New Zealand. His wife and three children live in Auckland, New Zealand. All three children are students. His wife Karuna Devi works for Cambridge Clothing Company. His relationship with his wife has been unsatisfactory since he was charged and he wishes to travel to New Zealand for at least a month to work on this relationship. He currently lives with his brother and mother at Lot 2 Nadawa Road, Nasinu in a house worth \$112,000. He offers the title of this house as security to the court.

Finally, the Applicant says that he assisted the police during the investigation and was going to be made a State witness when he told the police of his intentions of travelling to New Zealand.

Annexed to the Applicant's affidavit are a letter to the court from his solicitors, dated 7<sup>th</sup> December 2007 which advises the court that an earlier intention to apply for variation of bail was abandoned because the Applicant's wife and daughter had instead decided to visit Fiji, and details of the property at Nadawa. The property is a housing authority sub-lease, under the joint names of Sashi Rudra Singh and Karuna Devi. It was registered in 1998. A mortgage on the property (registered under both names) was discharged on the 15<sup>th</sup> of February 2008. A valuation of the property sets the current market value at \$112,000. A letter written to Director of Immigration, by the Applicant's solicitors, dated 16<sup>th</sup> October 2007, states that the Applicant wished to travel to New Zealand, that he had then not been criminally charged and that "our client advises that the State would probably want him as a witness only." According to the Applicant's affidavit, he was, very shortly thereafter, charged together with other accused persons with fraud offences. The charge is as follows:

Statement of Offence

CONSPIRACY TO COMMIT MISDEMEANOUR NAMELY  
FRAUDULENTLY CAUSING OR PROCURING THE PAYMENT OF  
MONEY BY FALSE PRETENCES: Contrary to sections  
385, 308 and 309 of the Penal Code, Cap. 17.

Particulars of Offence

SHASHI RUDRA SINGH s/o Sukh Deo Singh, between the 1<sup>st</sup> day of September, 2000 and the 10<sup>th</sup> day of August 2001 at Suva in the Central Division conspired with others to cause or procure money to be paid by false pretences, in that they agreed, with intent to defraud, to cause members of the MINISTRY OF FORESTRY AND FISHERIES to submit local purchase orders authorizing the purchase of farming and other equipment and Suncourt Corporation Ltd. to submit invoices for the purchase of farming and other equipment knowing such documents would be false in certain respects, on various occasions in accordance with the attached schedule, so as to obtain a benefit from the Government of the Republic of Fiji Islands of cash in the sum of \$3,638,748.63 for the use of themselves or for other persons. *(schedule is not included)*

The State opposes variation of bail. Its reasons are set out in the affidavit of Inspector Dharmen Chandra. He states that the police force was concerned when the Applicant acquired a work permit for New Zealand while he was under investigation, that because the Applicant's family is settled in New Zealand it is believed that he intends to abscond, that it is believed that a number of persons suspected of criminal conduct are using the political events of December 2006 to justify absconding to New Zealand because of the breakdown of diplomatic relations between the two countries and that the Applicant is a flight risk. It is also submitted that other persons have possible equitable interests in the property at Nadawa and that it is therefore inadequate security.

The effect of variation of bail in this case would be to permit the Applicant to travel out of Fiji pending his trial. Such a variation is not unheard of, but it continues to be rare.

This is because the cost to the State and the public in pursuing extradition proceedings and locating absconding suspects is prohibitive. In this very case, one of the accused persons has absconded, and has not been located.

There are good reasons why this application should be refused in this case. Firstly the Applicant appears to have no real ties to Fiji. He has not informed the court that he has business interests here, and his family is settled in New Zealand. The security he offers could not be forfeited to the State under section 27 of the Bail Act because the Applicant is not the sole owner of the property. It would be gravely unjust to the Applicant's wife if she were to find that her joint share in the Nadawa property was forfeited to the State without her knowledge or consent. The Applicant is in no position to offer property as security when he is only the co-owner of the sub-lease. Further as State counsel correctly points out, what equitable constructive trusts exist in relation to the property, and what contributions his mother and brother have made to the property, is unknown. Furthermore, given the value of the alleged fraud, the value of the offered security fails to protect the interests of the prosecution.

I make no comment on the state of relations between Fiji and New Zealand, or on the chances of New Zealand honouring its obligations in relation to extradition arrangements between Fiji and New Zealand. It is enough to say that where a suspect absconds, extradition proceedings are not simple even under the backing of warrants procedures agreed to by Pacific Island Forum countries.

In this case, to allow the Applicant to travel before his trial commences in August 2008 is too great a risk for the administration of justice.

The application is refused.



  
Nazhat Shameem  
JUDGE

At Suva  
20<sup>th</sup> March 2008