

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**MISCELLANEOUS JURISDICTION**

**Crim Misc Case No: HAM 017/2013**

**BETWEEN** : **TOMASI SINUDAMU**  
**APPLICANT**

**AND** : **THE STATE**  
**RESPONDENT**

**COUNSEL** : **Applicant in Person**  
**Ms Fong for the State**

**HEARING DATE** : **02/04/2013**

**RULING DATE** : **11/04/2013**

**RULING**

1. The applicant **TOMASI SINUDAMU** had applied for bail pending trial.
2. The applicant has been charged for four counts of Aggravated Robbery contrary to section 311(1)(b) and one count of Theft contrary to section 291 of the Crimes Decree No: 44 of 2009.
3. That the applicant is seeking bail on the following grounds:
  - He needs to financially support his wife, step father and elderly mother who is suffering from a stroke,
4. Section 3(1) of the Bail Act states that an accused has a right to be released on bail unless it is not in the interest of justice that bail should be granted. Consistent with this principle, section 3(3) of the act provides that there 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.

5. The 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. (17(2))
6. Where bail is opposed, section 18(1) requires that the party opposing bail addresses the following considerations:
  - (a) the likelihood of the accused person surrendering to custody and appearing in court;
  - (b) the interest of the accused person:
  - (c) the public interest and the protection of the community.
7. Section 19(1) of the bail act provides that an accused person must be granted bail by court unless:
  - (a) the accused person is unlikely to surrender to court custody and appear in court to answer charges laid;
  - (b) the interest of the accused person will not be served through the granting of bail; or
  - (c) granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.
8. Section 19(2) of the Act sets out a series of considerations that the court must take into account in determining whether or not any of the three matters mentioned in section 19(1) are established. These matters are:
  - (a) as regards the likelihood of surrender to custody-
    - (i) the accused person's background and community ties (including residence, employment, family situation, previous criminal history)
    - (ii) any previous failure by the person to surrender to custody or to observe bail conditions;
    - (iii) the circumstances, nature and seriousness of the offence;
    - (iv) the strength of the prosecution case;
    - (v) the severity of the likely penalty if the person is found guilty;
    - (vi) any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or as a contrary indication, was arrested trying to flee the country)

- (b) as regards the interest of the accused person –
    - (i) the length of time the person is likely to have remained in custody before the case is heard;
    - (ii) the conditions of that custody;
    - (iii) the need for the person to obtain legal advice and to prepare a defence;
    - (iv) the need for the person to beat liberty for other lawful purposes (such as employment, education, care of dependants);
    - (v) whether the person is incapacitated by injury or intoxication or otherwise in danger or in need of physical protection;
  - (c) as regards the public interest and the protection of the community-
    - (i) any previous failure by the accused to surrender to custody or to observe bail conditions;
    - (ii) the likely hood of the person interfering with evidence, witnesses or assessors or any specially affected person;
    - (iii) the likelihood of the accused person committing an arrestable offence while on bail.
9. The State opposes the bail. The State submits that the accused has previous convictions and 10 are in operational period. He has a pending case before Magistrate Court Suva. Bail has been granted in that case by learned Magistrate.
  10. The applicant has been charged for four counts of Aggravated Robbery contrary to section 311(1)(b) and one count of Theft contrary to section 291 of the Crimes Decree No: 44 of 2009. He has been in remand since 06/10/2011.
  11. He is the sole bread winner of the family. He has to support his wife, step father and his sick mother.
  12. Trial date has been not been set in this case. He has served 18 months in remand to date.
  13. Aggravated Robbery and Theft are no doubt serious offences but seriousness of the offences alone cannot form a ground to refuse bail.
  14. In considering these matters, the court must bear in mind the presumption of innocence.

15. Having heard both parties, I am not satisfied that the State has succeeded in rebutting the presumption in favour of granting of bail to the applicant. Interest of justice can be served granting bail on strict conditions. I grant bail to the applicant on the following conditions:
1. To secure his own attendance at the High Court by standing in his own recognizance in the sum of \$1000.00 (Non-cash).
  2. To provide three sureties. They must sign a bond of \$1000.00 each. (Non cash)
  3. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
  4. To surrender his passport if any to court and not to apply for a travel document. The Director of Immigration is informed of the travel ban on the applicant.
  5. To report to nearest police station every Wednesday and Sunday between 6am to 6pm.
  6. Not to leave Suva until the case is concluded.
  7. The Applicant is put on a night curfew between 6pm to 6am.
  8. Any breach of these conditions is likely to result in cancellation of his bail.
  9. 30 days to Appeal.

P Kumararatnam

**JUDGE**

At Suva  
11/04/2013