

**IN THE HIGH COURT OF FIJI AT SUVA**  
**(CRIMINAL JURISDICTION)**

Criminal Miscellaneous Case No: 180 of 2015

Criminal Case No: HAC 347 of 2015

**BETWEEN** : LEPANI GAUNAVOU

**Applicant**

**AND** : STATE

**Respondent**

**Counsel** : Applicant in person  
Ms. S. Serukai for Respondent

**Date of Ruling** : 30<sup>th</sup> December 2015

**BAIL RULING**

1. The Applicant is applying for bail pending trial in HAC 347 of 2015. He is charged with one count of Aggravated Burglary and one count of Theft contrary to sections 313(1) and 291(1) of the Crimes Decree 2009 respectively. The Respondent opposes the granting of bail.
2. Section 3(1) of the Bail Act 2002 ("Bail Act") provides that every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted.
3. Section 3(3) of the Bail Act provides thus;  
*"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."*

4. The Respondent is therefore required to rebut the above presumption in line with the provisions of section 18(1) of the Bail Act.

5. Section 18(1) provides that;

*"A person making submissions to a court against the presumption in favour of bail must deal with-*

*(a) the likelihood of the accused person surrendering to custody and appearing in court;*

*(b) the interests of the accused person;*

*(c) the public interest and the protection of the community."*

6. I turn now to examine the grounds of objection. The Respondent filed an affidavit of DC 3503 Litendra Prakash opposing bail, on 10<sup>th</sup> December 2015. The State Counsel who appeared for the hearing on 11<sup>th</sup> December 2015 moved for time to file a further affidavit stating that the aforementioned affidavit is inadequate. Though the Respondent was allowed to file a further affidavit by 17<sup>th</sup> December 2015 accordingly, no such further affidavit was filed.

7. The affidavit filed by the Respondent on 10<sup>th</sup> December 2015 states thus;

*"1. THAT I have been employed as a Police Officer for more than 10 years and I am now stationed in Criminal Investigation Department, Nausori Police Station.*

*2. THAT I am authorised to swear this affidavit.*

*3. THAT I make this affidavit from the best of my knowledge and information obtained in the course of my work as a police officer.*

*4. THAT I have been informed that LEPANI GAUNAVOU have filed his application for bail pending trial with the High Court at Suva.*

*5. THAT I understand that LEPANI GAUNAVOU has deposed his affidavit in support of his application for bail pending trial through his counsel.*

**REPLY TO LEPANI GAUNAVOU AFFIDAVIT**

*6. THAT I disagree with the applicant's submission because the applicant will live in Nadali Village and interference with the witnesses is highly possible.*

*7. THAT I disagree with the applicant's submission because a serious offence was committed.*

8. *THAT I disagree with the applicant's submission because the applicant may commit the offence again whilst on bail. In this case the charge is of Aggravated Burglary and Theft and it is a repeatable offence.*
9. *THAT I disagree with the applicant's submission because applicant selected one surety.*
10. *THAT I disagree with the applicant's submission because the applicant failed to explain the credibility of the surety.*
11. *THAT the charge filed against the Applicant is serious.*
12. *THAT the case against the Applicant is strong.*
13. *THAT with the strong case against the Applicant, I believe that he is unlikely to appear in Court to answer the charge.*

**INTEREST OF THE APPLICANTS or ACCUSED**

14. *THAT I have been informed that the Applicant is represented by a Defense counsel.*

**CONCLUSION**

15. *THAT I pray to this Hon. Court that the applicant's bail pending trial be refused based on the grounds of objection that I have stated in my sworn affidavit."*

8. It is pertinent to note that there is no affidavit filed by the Applicant in support of this application for bail. Further, the Applicant is unrepresented in this bail application and also in the substantive matter as he waived his right to counsel on 13<sup>th</sup> November 2015. Therefore, it is regrettably noted that paragraphs 5 and 14 of the affidavit filed on behalf of the State contains wrong information.
9. It is also evident that the content of the aforementioned affidavit does not assist the State to rebut the presumption in favour of granting bail to the Applicant. The averments to the effect that the Applicant is charged with a serious offence and that there is a strong case against the Applicant are the only averments that are somewhat relevant for the purpose of opposing bail.
10. However, Respondent has failed to provide any evidence on the circumstances, nature and the seriousness of the offence and on the strength of the prosecution case. Mere statements that the Applicant is charged with a serious offence and that there is a strong case against the Applicant are not sufficient to rebut the presumption in favour of granting bail.




11. In the circumstances, I hold that the Respondent has failed to rebut the presumption in favour of granting of bail to the Applicant.

12. Therefore, this application for bail pending trial is allowed and the Applicant is hereby granted bail subject to the following conditions.

The Applicant should;

- a) sign a personal surety bond of \$1000;
- b) appear in case No. HAC 347 of 2015 on every court date;
- c) not commit any offence whilst on bail;
- d) provide clear details of his residential address and reside at that address until the conclusion of the case, HAC 347 of 2015;
- e) not change the aforementioned address provided to court without the leave of the court;
- f) not interfere with prosecution witnesses either directly or indirectly;
- g) not apply for any travel document and not leave the jurisdiction until the conclusion of the case;
- h) report to Nausori Police Station on every Friday between 6.00am and 6.00pm, commencing from 01/01/2016;
- i) remain at home curfewed daily between the hours of 7.30pm to 5.30am; and
- j) provide two sureties and each surety to sign a bond of \$1000 to ensure that the Applicant complies with his bail undertaking.



  
**Vinsent S. Perera**  
**JUDGE**

**Solicitor for the State: Office of the Director of Public Prosecution, Suva.**