

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO. HAM 154 OF 2015S

BETWEEN

SAMUELA BAVORO

APPLICANT

AND

THE STATE

RESPONDENT

Counsels : Applicant in Person  
Mr. Y. Prasad for Respondent  
Hearing : 2 November, 2015  
Ruling : 31 March, 2016

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## WRITTEN REASONS FOR DENYING BAIL

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1. In Suva High Court Criminal Case No. 217 of 2015S, the applicant, with another, faced the following charges:

FIRST COUNT

*Statement of Offence*

AGGRAVATED ROBBERY: Contrary to section 311 (1)(a) and (b) of the Crimes Decree No. 44 of 2009.

*Particulars of Offence*

LEONE ROKOMARAIVALU and SAMUELA BAVORO on the 28<sup>th</sup> day of May, 2015 at Visama in the Central Division robbed DEO KUMAR of assorted jewelleries valued at \$20,000.00, cash \$9,000.00 and assorted mobile phones valued at \$3,847.00, all

to the total value of \$32,847.00 and immediately before committing such robbery used personal violence on the said **DEO KUMAR**.

### SECOND COUNT

#### *Statement of Offence*

**THEFT**: Contrary to section 291(1) of the Crimes Decree No. 44 of 2009.

#### *Particulars of Offence*

**LEONE ROKOMARAIVALU and SAMUELA BAVORO** on the 28<sup>th</sup> day of May, 2015 at Visama in the Central Division, stole a van registration number EG 075 valued at \$12,000.00 the property of **DEO KUMAR**.

2. The applicant first appeared in the Nausori Magistrate Court on 8 June 2015. He had been remanded in custody since then. He first appeared in the High Court on 12 June 2015. As of today, he had been in custody for 9 months 23 days. He applied for bail on 23 September 2015. I heard the parties on 2 November 2015. I denied bail on 27 November 2015. I said I would give my reasons later. Below are my reasons.
3. It is well settled that an accused person is entitled to bail pending trial, unless the interest of justice requires otherwise. The test for the grant of bail was whether or not the accused will turn up for trial on the date set for the same. In deciding the above, it was mandatory for the court to consider the factors laid out in Section 19 of the Bail Act 2002.

#### **Factor No. 1: Likelihood of Accused's Surrender to Custody:**

4. The accused is 33 years old, married with 2 young children. He resided at Naiyala Subdivision at Nadali. He reached Form 4 level education and appeared to be a subsistence farmer. According to the prosecution, they had a strong case against the applicant. A van driver who allegedly dropped him at the crime scene had now become a state witness. He refused a police i.d. parade identification and was identified by the complainant 2 days after the incident in Nausori Town. There were other strong circumstantial evidence tying him to the alleged crime. If found guilty after trial, he faces a prison sentence of more than 14 years. Under this heading, his chances of bail are slim.

#### **Factor No. 2: Interest of the Accused:**

5. This case will be heard before June 2017. The court is empowered to keep a person in custody for 2 years before trial. In any event, time spend in remand will be deducted from his final sentence if he's found guilty. He is now remanded in the new Suva Remand Centre. He is represented by Legal Aid

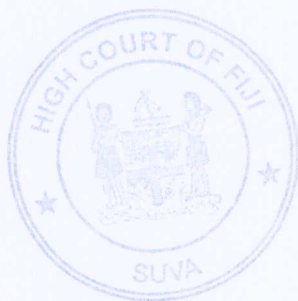
Lawyers, and they can visit him in custody as and when they pleased to prepare his case. There is no need for him to be at liberty for other lawful purpose. He is not incapacitated. Under this head, in my view, his chances of bail are slim.

**Factor No. 3: Public Interest and the Protection of the Community:**

6. The charges against the applicant are serious. On 28 May 2015 at 2.30 am, 7 masked man broke into the complainant's family home, armed with pinch bar, bolt cutter and timbers, threatened the family, ransacked their house and stole the items mentioned in count no. 1. Later, the men stole the complainant's motor vehicle. This was indeed a painful experience for the complainants. In my view, although the accused was presumed innocent until proven guilty beyond reasonable doubt in a court of law, it was in the public interest and the protection of the community, that the accused be remanded in custody, until further orders of the court. Under this head, the accused's chances of bail are slim.

**Conclusion:**

7. It was for the above reasons that I refused bail on 27 November 2015.



  
**Salesi Temo**  
**JUDGE**

Solicitor for Applicant : In Person  
Solicitor for Respondent : Office of the Director of Public Prosecution, Suva.