

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

**Criminal Misc. Application No HAM 186 of 2022**  
**Criminal Case No. HAC 095 of 2021**

**BETWEEN** : **JOSEVA RAKAI**

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

**Appearances** : Applicant in person  
: Mr. Zunaid, Z and Mr. Samisoni, E for the State

**Date of Ruling** : 13 September 2022

**RULING**

1. The Applicant is jointly charged with three others for a count of aggravated robbery. The aggravation alleged is committing the offence in the company of each other.
2. The alleged robbery was an armed home invasion during the early hours of the morning whilst the Complainants were asleep. The allegations are serious: force was used on the three complainants, one of whom was a 67 year old man who sustained injuries after he was repeatedly punched and beaten. An autistic child suffered extreme shock and trauma.
3. The Applicant and his co-accused have pleaded not guilty to the charge and a trial date has been fixed, from 16/01/23 to 03/02/23.
4. The Applicant now seeks bail to enable him to continue with his employment and to instruct a private counsel. He says he is presumed innocent and was produced in Court after 48 hours of his arrest, in breach of his Constitutional rights. He is a mechanical

electrician and worked for Prasad's Auto Electrical. He proposes his mother and an uncle as sureties.

5. DC 5130 Apenisa Katubadrau deposes that he positively identified the Applicant from a CCTV footage uplifted from the crime scene. The Applicant had looked straight into the camera while about 4 steps away from the camera and he recognized him as the de facto partner of his aunt. The Applicant is often at his aunt's house and he also sees him around the village. When caution interviewed, the Applicant confirmed that DC Katubadrau was the nephew of his de-facto partner.
6. The State relies on this evidence of identification and also on circumstantial evidence against the Applicant and his accomplices.
7. The Applicant has a previous conviction for absconding bail and two pending cases in the Magistrate's Court. He was charged with this offence during the pendency of Magistrates Court proceedings against him.
8. Detective Segeant Lasarusa Saucoko in his affidavit swears to having conducted a search and finding there to be no such company as Prasad's Auto Electrical in Samabula.


### **Analysis**

9. Of course, the Applicant is innocent until proven guilty. The presumption in favour of bail is consistent with this right under section 14 (2) of the Constitution. But the presumption in favour of bail is rebuttable.
10. Indeed, under section 3 (4) (a) of the Bail Act, the presumption is displaced where the person seeking bail has previously breached a bail undertaking or bail condition.
11. The Applicant has a previous conviction for absconding bail. The presumption in favour of a grant is therefore displaced.
12. The Prosecution case is potentially strong. Granted, the truth of the charges is a matter for trial. The maximum penalty for aggravated robbery is 20 years imprisonment. Armed

home invasion is amongst the most serious forms of aggravated robbery. If convicted, the Applicant is most likely to face a long imprisonment sentence. This could be an incentive to not appear in Court to answer the charges against him.

13. Additionally, the charges he faces in this case were brought during the pendency of two cases against him in the Magistrates Court. In my opinion, he is likely to commit an arrestable offence if granted bail. This will put at risk the safety of the community.
14. The Applicant says he wishes to instruct a private lawyer. He has refused Legal Aid assistance. That is his prerogative. However, I do not accept that he is not able to instruct a private lawyer whilst in remand. Private lawyers are permitted to visit the remand centre to take instructions from their clients.
15. Lastly, the Applicant says the Police had breached his Constitutional rights by keeping him for more than 48 hours before he was produced in Court.
16. The rights of arrested and detained persons are provided for in section 13 of the Constitution. Section 13 (1) (f) requires that an arrested or detained person be produced in Court as soon as reasonably possible, within 48 hours, or if that be not reasonably possible, as soon as possible thereafter.
17. There is insufficient material before the Court on this allegation and in any event, the proper forum for such an allegation is not a bail application, but one challenging the breach of a Constitutional right if the Applicant wishes to take such a course.
18. For all of the above reasons, bail is refused.



  
Staniu F. Bull  
**Acting Puisne Judge**

**Solicitors:**  
Applicant in person  
Office of the Director of Public Prosecutions for the State