

Likelihood of the Applicant surrendering to custody

- (i) That the applicant had three (3) previous convictions, which is of similar property offences;
- (ii) That the applicant has been charged with serious offences which attracts the maximum penalty as follows;
 - (a). Aggravated Burglary – Penalty of imprisonment of 17 years
 - (b). Theft – Penalty of 10 years imprisonment
- (iii) That during the commission of the offence of Aggravated Burglary, the applicant was in the company of another and they broke into the house of the complainant namely, Ms. Patricia Kailoaloa as trespassers and committed the offence of theft.

Interest of the Applicant

- (i) That the applicant being remanded in custody will ensure that he is present in court on every court date and it will further expedite this matter;
- (ii) That the applicant being remanded at the Suva Remand Centre, he will have access to his Counsel and will not be prejudiced in any way. The Fiji Correctional Services allow for remanded persons to have access to their legal counsel subject to the rules and regulations of the Fiji Correctional Services. Thus, the applicant's rights to a fair trial are not prejudiced in any way.

Public interest and protection of the community

- (i) That considering the nature of these type of offence and it being prevalent in our society, it is in the public interest for the applicant not be released on bail and the safety of the community be given paramount interest.

Law

4. I now consider **Section 3(1)** of the **Bail Act** and it states as follows:

“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”

5. I am in total agreement that the Applicant under Bail Act has the right to be granted bail. However, the refusal is exception. But when we consider Section 3(1) of the Bail Act, it is has limitations.
6. Considering the decision made by Justice Shameem in **Tak Sang Hoa v The State (2001) FJHC 15** and Justice Fatiaki in Adesh Singh & Others Miscellaneous Act No. **11 and 12 of 1988**. I consider the following factors:
 - a. The presumption of innocence;
 - b. Whether the accused to appear to stand trial;
 - c. Whether bail has been refused previously;
 - d. The seriousness of the charges;
 - e. The likelihood of the accused re-offending on bail;
 - f. Any interference with prosecution witness;
 - g. The accused's character;
 - h. The accused's right to prepare his defence;
 - i. The likelihood of further charges;
 - j. The State's opposition to bail.
7. Considering the nature of the offence, breaking into someone's house and stealing of properties. These type of offence have become prevalent in our society today.
8. Considering both the application for bail and submission by the State I am of the view that the applicant falls within the ambit of Section 19 of the Bail Act.
9. Now I consider Section 19(1). Now I refer to Section 19 (1) of the Bail Act:-

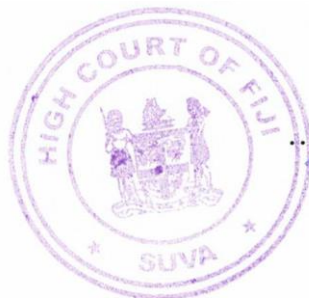
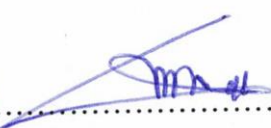
“19. (1) an accused person must be granted bail unless in the opinion of the police officer or the court, as the case may be-

 - a) The accused person is unlikely to surrender to custody an appeal in court to answer the charges laid;*
 - b. The interests 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.*
10. Considering the nature of the offence, I agree with the State Counsel that the Applicant will be endangering the public interest set out in Section 19(1)(c) of the Bail Act.

In **Isimeli Wakaniyasi v The State** (2010) FJHC 20; HAM 120/2009 (29th January 2010). His Lordship Justice Goundar states that:

"All three grounds need not to exist to justify refusal of bail. Existence of any one ground is sufficient to refuse bail".

11. Considering all, I am of the view that it is with public interest that the Applicant remains in remand pending trial.
12. Application for bail is refused.
13. You have 30 days to appeal to the Court of Appeal.

 
Waleen M George
Acting Puisne Judge

Dated at Suva this 29th July, 2024

Solicitors: Legal Aid Commission for Applicant Office of the Director of Public Prosecution for Respondent