

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

**Criminal Case No. HAM 240 of 2024**

**STATE**

**-v-**

**POATE RADREKUSA**

Accused: In Present  
State: Mr. Nofaga, Hezekiah (State Counsel of ODPP)

Bail Hearing: 18<sup>th</sup> November, 2024  
Bail Ruling: 12 December, 2024

**BAIL RULING**

1. The Applicant initially filed an application for bail.
2. The applicant submits following grounds for bail:
  - (a). THAT he has an unemployed wife and three children; and
  - (b). THAT two of his children are in Primary School and his youngest daughter is two years old.
3. The Prosecution objected to bail and filed the affidavit of Police Constable 5924 Loaloaivalu Turaga dated 24<sup>th</sup> September, 2024.
4. The Prosecution in their respond to the applicant's application for bail are as follows;

**LIKELIHOOD OF THE APPLICANT SURRENDERING TO CUSTODY AND APPEARING IN COURT**

- (a) THAT the offence for which the Applicant is charged, has a maximum penalty of 17 years imprisonment.
- (b) THAT the tariff for the said offence ranges from 1 to 9 years dependent on the degree of harm suffered by the victim.
- (c) THAT the Applicant as per his previous convictions currently has 18 previous convictions where 5 are currently active. From the said 5, one is for absconding

bail, two are property related offences, one is for resisting arrest and one is for assaulting a police officer in due execution of his duty.

- (d) THAT the State has strong evidence against the accused in implicating that he and two others entered Raziya Mobile, and used force before and during the commission of theft.
- (e) THAT the State relies on identification from CCTV footage within the premises of where the alleged offence took place to implicate the Applicant.
- (f) THAT the State has witnesses via their occupation have come across the Applicant numerous times hence how he was identified.
- (g) THAT checks have been made with the Court Registries between Nausori and Navua and it has been found that the Applicant has pending matters in the Nausori Magistrates Court and Suva Magistrates Court.
- (h) THAT in the Suva Magistrates Court, the Applicant has three pending matters where he is charged as Voate Radrekusa.
- (i) THAT the Applicant in the Suva Magistrates Court is charged for the offence of Theft CF69 of 2024 and Absconding Bail CF 170 of 2024 before Suva Magistrates Court No. 4 where he is on a bench warrant and Theft CF 247 of 2024 before Suva Magistrates Court 2.
- (j) THAT in the Nausori Magistrates Court the Applicant has a pending matter where he is charged for the offence of Theft CF 292 of 2023 and is on bench warrant for that matter since 22nd of February 2024. (A copy of the charge and bench warrant for the Applicant's pending matter in the Nausori Magistrates Court attached for the Court's perusal).
- (k) THAT in light of the State's strong evidence against the accused, the maximum penalty and tariff for the offence of aggravated robbery, the nature of the Applicant's pending matters and his previous convictions it is evident that the Applicant if granted bail will not surrender into the Courts custody neither will he appear for his matter.

#### **INTEREST OF THE APPLICANT PERSON**

- (a) THAT the Applicant has indicated that he wishes bail to be granted on the presumption of innocence, continue employment, hire private counsel and family obligations.
- (b) THAT the Applicant is a farmer and he supports his wife who is unemployed and three children.
- (b) THAT the Applicant has indicated that he has two sureties, namely his cousin Aliko Canaweka and brother Marika Qovu. The two sureties can be contacted on mobile number 2564203.
- (d) THAT attempts to do checks on the two sureties were futile as the number given was diverted when called.

- (e) THAT the Applicant has been remanded for HAC 217 of 2024 since 12<sup>th</sup> August 2024 which is approximately 48 days.

### **PUBLIC INTEREST AND PROTECTION OF THE COMMUNITY**

- (a) THAT as mentioned above the Applicant is adversely recorded where he has a history of committing property-related offences.
- (b) THAT the Applicant has five active previous convictions for which two are property related offences, one for absconding bail, one for resisting arrest and the last for assaulting a police officer during the execution of his duty.
- (c) THAT the Applicant has pending matters where he is charged for property-related offences and absconding bail and is on a bench warrant.
- (d) THAT in consideration of the above, it is not in the best interest of the public nor protection of the community that bail be granted for there is a likelihood that he would commit an arrestable offence and would assault police officers in due execution of their duties.

### **LAW**

5. I consider section 3(1) of the Bail Act and it states as follows:

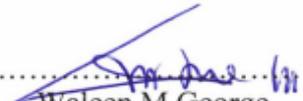
*"Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted."*

### **ANALYSIS**

6. Considering the nature of the offence, the Applicant's application and the affidavit of the Investigation officer filed by State in response, I am of the opinion that the Applicant should not be granted bail.
7. According to the Investigation Officer's affidavit, the Applicant is currently on a bench warrant with regards to his pending cases in the Suva Magistrates Court Criminal File Number 247 of 2024 and at the Nausori Magistrates Court Criminal File Number 292 of 2023.
8. Section 3.-(4)(a) of the Bail Act 2002 states;
- "3. – 4. The presumption in favour of the granting of bail is displaced where –**
- (a) the person seeking bail has previously breached a bail undertaking or bail condition."**
9. The Applicant's absence from court without a reasonable excuse is a justification for refusal of bail. He has failed to observe an important bail condition.

**CONCLUSION**

10. Applicant's application for bail is declined.

  
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Waleen M George  
**Acting Puisne Judge**



**Dated at Suva this 12<sup>th</sup> day of December, 2024.**

*Solicitor for the State –  
Solicitor for Accused -*

*Office of Director of Public Prosecution, Suva  
Accused in Person.*