

**IN THE HIGH COURT OF FIJI (WESTERN DIVISION)**

**AT LAUTOKA,**

**CRIMINAL JURISDICTION**

**CRIMINAL MISCELLANEOUS CASE NO: HAM 51 OF 2025**

**BETWEEN:**

**FRANK JACK JOHNSON**

**APPLICANT**

**AND**

**STATE**

**RESPONDENT**

Counsel:

Mr E. Wainiqolo

Ms R. Pie for Respondent

Date of Hearing: 12 March 2025

Date of Ruling: 12 March 2025

**RULING**

1. The Applicant seeks leave of the Court to travel out of jurisdiction from 14 March 2025 until 30 April 2025. His application is supported by his own affidavit and the documents FJ1 and FJ2 attached to it.

2. The Applicant in the substantive matter is charged with one count of Rape contrary to Section 207(1)(2)(a) of the Crimes Act of 2009. The substantive file will be called in June 2025 to fix a trial date.
3. The Applicant was granted bail by this Court by its Ruling dated 15 December 2023. The conditions of bail required him to surrender his passport and a stop departure order was issued banning his travel out of Fiji.
4. The State does not object to the application.
5. The Applicant is a Fiji national and an officer/ crew member hired by local shipping company (Interlink Shipping Line) to coordinate the transfer of one of its new vessel from Japan.
6. In his affidavit, the Applicant states that as part of his assignment to take over the vessel in Japan and transfer it to Fiji, he is required to travel to Japan. He has appended 'FJ2' to his affidavit to substantiate his claim. The Court is also informed that his travel to Japan is beneficial to Fiji's economy. He has tendered his bank / FNPF account details to show his financial capacity.
7. The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him / her. The factors relevant in assessing the likelihood of surrender to custody are that-(i) the accused person's background and community ties(including residence, employment family situation, previous criminal history);(ii) any previous failure by the person to surrender to custody or to observe bail conditions; (iii) the circumstances, nature and seriousness of the offence; (iv) the strength of the prosecution case; (v) the severity of the likely penalty if the person is found guilty; (vi) any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country).

8. In granting bail, the Court is required to consider the interests of the accused as well. The documents attached to Applicant's affidavit show that the Applicant has family ties and employment interests in Fiji. Given the Applicant's employment profile, I consider it more likely that the Applicant will attend, and that he will not delay the start of the trial.

9. In *Qarase v Fiji Independent Commission Against Corruption* [2009] FJHC 146 HAM 038. 2009 (22 July 2009) Goundar J observed as follows:

Whilst the need to secure the accused's attendance at hearings is a paramount consideration in this kind of application, the purpose of the overseas visit, the length of time the accused will be abroad and the inconvenience caused to the administration of justice are equally relevant factors for consideration.

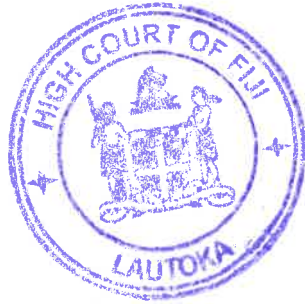
10. Having heard the counsel and read the affidavits and the supporting documents filed, I am satisfied that a bail variation be granted for the Applicant to travel to Japan for the purpose stated in the affidavit. It is in the Applicant's interest that he leaves this jurisdiction for the stated purposes and for the limited period permitted by this Court on strict bail conditions.

11. Application for bail variation is granted.

12. The following Orders are made:

- I. In addition to the existing bail conditions, a surety bail bond of FJD 2,500. 00 is required.
- II. The passport of the Applicant to be released to the Applicant forthwith.
- III. The passport must be surrendered to the High Court Registry upon completion of the travel within two days after arrival in Fiji on 30 April 2025.
- IV. The condition requiring the Applicant to report to police will be lifted during Applicant's travel abroad.
- V. All other existing bail conditions imposed by this Court will remain operational other than those connected to the travel ban.

- VI. Subject to the conditions above, the Stop Departure Order imposed by the High Court is hereby lifted from 14 March 2025 to 30 April 2025 to allow the Applicant to travel to Japan.
- VII. High Court Registry is directed to communicate this order to the Department of Immigration forthwith.



Aruna Aluthge

Judge

At Lautoka

12 March 2025

Solicitors:

Tuifagalele Legal for Applicant

Office of Director of Public Prosecution for Respondent