

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL MISC NO. HAM 052 OF 2025

BETWEEN : **AIYAZ SAYED-KHAIYUM**

AND : **STATE**

Counsel : **Ms G Fatima for the Applicant**
Ms N Tikoisuva for the Respondent

Date of Judgment : **9 May 2025**

RULING

(Bail Review)

- [1] The Applicant is facing multiple charges in three separate cases, with trials pending in the Magistrates' Court. Bail has been granted in all three cases, and as part of his bail conditions, his passport remains with the court, preventing him from traveling overseas. He has applied twice for the release of his passport for medical purposes, but both applications were denied by the Magistrates' Court.
- [2] On 15 April 2025, the Applicant applied for a review of the Magistrates' Court decisions that refused to vary his bail conditions to allow overseas travel for medical treatment. These decisions were made by two different magistrates in two of his cases. Although he did not seek to vary his bail conditions in the third case, since the same bail conditions apply across all three cases, he filed a consolidated application for bail review.

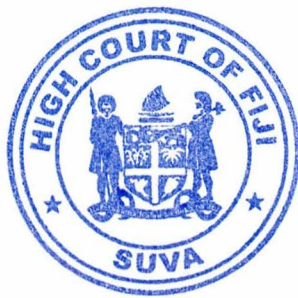
- [3] The application is supported by affidavits from the Applicant and his cardiologist, Dr. Omar Hayat Khan Niyazi. According to the medical evidence, the Applicant has recently experienced palpitations, chest heaviness, and syncopal episodes. He was examined by Dr. Niyazi at Heart International, Nadi, where blood tests revealed elevated Troponin levels.
- [4] Following a consultation with another cardiologist, Dr. Niyazi concluded that the Applicant is likely suffering from cardiac arrhythmia, which requires diagnosis and treatment by a Cardiac Electrophysiologist. As Fiji does not have a Cardiac Electrophysiologist, this treatment is not available locally. Dr. Niyazi has attached all relevant medical reports to his affidavit.
- [5] In his own affidavit, the Applicant details why he is not a flight risk, citing his immediate family ties, his current employment as a legal practitioner, and his commitment to returning to face the charges against him.
- [6] The State opposes the review, arguing that the Applicant's trial is scheduled to commence from 26 to 30 May 2025 in the Magistrates' Court at Suva and that the status quo should remain unchanged.
- [7] There are two avenues to challenge a bail decision: (1) an appeal based on errors in the exercise of bail discretion, or (2) a review. The Applicant has opted for a review.
- [8] Section 30(3) of the Bail Act grants the High Court authority to review any bail-related decision made by a magistrate.
- [9] Section 30(7) of the Bail Act states:

A court with the power to review a bail determination may, if not satisfied that there are special facts or circumstances justifying a review, refuse to hear the review application.

- [10] Since the Applicant cited his medical condition as the ground for review, I determined that a paper hearing was appropriate. In any bail matter, the paramount consideration is whether the accused will appear for trial.
- [11] The Applicant was released on bail under the condition that he must not travel overseas while the charges are pending. In September 2023, he was granted permission to travel overseas for medical treatment and returned to Fiji after receiving care for kidney and heart conditions.
- [12] In July 2024, the Applicant applied for overseas travel for kidney treatment, but the Magistrates' Court denied the request, stating that treatment was available locally and that overseas travel was unnecessary.
- [13] In August 2024, he made another attempt to secure permission for overseas medical treatment, but the Magistrates' Court again denied the request.
- [14] The review is based on a change in material circumstances relating to the Applicant's health. He is experiencing new symptoms affecting his heart, which is a vital organ.
- [15] However, the trial is scheduled to commence in two weeks. The Applicant is being tried alongside a co-accused, and neither has waived their right to a trial within a reasonable timeframe. The Magistrates' Courts are busy, and vacating the trial date of 26 May 2025 to allow the Applicant to travel overseas would disrupt the court schedule and delay proceedings. It is in neither the Applicant's nor his co-accused's interests to postpone the trial.
- [16] I acknowledge the Applicant's medical history, which includes heart and kidney issues. He is married with three young children and operates a legal practice—factors that reduce the risk of him absconding.

[17] I also recognize that the Applicant is experiencing new symptoms of heart abnormalities requiring further investigation and treatment. However, I am not convinced that his condition is severe enough to prevent him from participating in his trial on 26 May 2025. He has not been hospitalized due to his medical conditions and continues to practice law and manage his firm. Given the trial's proximity, it is not in the interest of justice to allow him to travel overseas at this time.

[18] The application for a review of bail conditions is declined. If the Applicant's health deteriorates, he may seek another review in the High Court or a further review in the Court of Appeal.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Patel & Sharma Lawyers for the Applicant

Office of the Director of Public Prosecutions for the State