

**IN THE MAGISTRATES' COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**CRIMINAL CASE NO: 182 OF 2024**

**AIYAZ SAYED-KHAIYUM**

**Applicant/Accused**

**v.**

**STATE**

**Respondent**

**Before** : **Senior Resident Magistrate Sufia Hamza**

**Counsel for the Applicant** : **Mr Sharma and Ms Fatima**

**Counsel for the State** : **Ms Ratukalou and Mr Koroinivalu**

**Date of Hearing** : **6<sup>th</sup> August 2024**

**Date of Ruling** : **9<sup>th</sup> August 2024**

**RULING ON APPLICATION FOR VARIATION OF BAIL CONDITIONS**

- [1] The Applicant/Accused is charged with the following offences:
- (a) Sixth count of Abuse of Office contrary to section 139 of the Crimes Act
  - (b) Seventh count of Obstructing the Course of Justice contrary to section 190(e) of the Crimes Act
- [2] By way of notice of motion and affidavit of the said Applicant/Accused, the Defence Counsel has made application for variation of bail conditions as follows:
- (a) His passport be released to him for the purpose of travel of out of Fiji.
  - (b) He be allowed to travel out of Fiji.
  - (c) His passport be handed back to the Magistrates Court Registry, Suva upon his return.
  - (d) The stop departure order if lodged with the Immigration Department, be lifted to allow him to travel out and return to Fiji.
  - (e) The service and hearing of this application be expedited.
  - (f) Any other orders this Court deems just and reasonable.
- [3] The State has raised objection on the ground that the Applicant/Accused has failed to establish any ground of necessity and urgency and that the administration of justice needs to be protected.

## Relevant Provisions of the Bail Act

[4] Section 30 (7) (8) (9) (10) of the Bail Act stipulates that:

- “(7) A court that has power to review a bail determination, or to hear a fresh application under section 14(1), may, if not satisfied that there are special facts or circumstances that justify a review, or the making of a fresh application, refuse to hear the review or application.*
- (8) The power to review a decision under this Part in relation to an accused person may be exercised only at the request of –*
- (a) the accused person;*
  - (b) the police officer who instituted the proceedings for the offence of which the person is accused;*
  - (c) the Attorney General;*
  - (d) the Director of Public Prosecutions; or*
  - (e) the victim of the offence*
- (9) The power to review a decision under this Part includes the power to confirm, reverse or vary the decision.*
- (10) The review must be by way of a rehearing, and evidence or information given or obtained on the making of the decision may be given or obtained on review.”*

## Relevant Case Authorities

[5] In the case authority of **Arts v State** [2017] FJHC 27; HAM 204.2016 (25<sup>th</sup> January 2017), Justice Rajasinghe stated that:

*“...it is the onus of the Applicant to satisfy the court, the existence of special and imperative circumstances or factors that justify the revocation of conditions of bail. Such special and imperative circumstances or factors should have to be either new or have not already been considered by the court when imposing such bail conditions on the Applicant.”*

[6] In the case authority of **Naicker v State** HAM 134 of 2015, Justice Aluthge cited the case authority of R v Nottingham Justices, ex parte Davis QBD (1981) QB 38, 71 Cr. App.R.178 DC, whereby the Lord Justice Donaldson stated that:

*“...The Court considering a fresh the question of bail is both entitled and bound to take account not only to the change in circumstances which has occurred since the last occasion but also all circumstances which, although then existed, were not brought to the attention of the Court. To do so is not to impugn the previous decision of the Court and is necessary in justice to the accused. The question is a little wider than ‘Has there been a change?...”*

- [7] In the case authority of ***Qarase v Fiji Independent Commission Against Corruption*** [2009] FJHC 146; HAC038.2009 (22 July 2009), Justice Goundar stated that:

*“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 inconveniences caused to the administration of justice are equally relevant factors for consideration.”*

**Affidavit in Evidence of the Applicant/Accused**

- [8] The first affidavit in evidence of the Applicant/Accused is reproduced as follows:

- (1) I am the Applicant in the above matter.
- (2) In so far as the contents of this Affidavit are within my own personal knowledge, they are true, and, in so far as they are not within my personal knowledge, I have identified the source of that information, and they are true to the best of my information, knowledge and belief.
- (3) I am currently facing the following charges:
  - A. Criminal Case No. 548 of 2023  
Abuse of Office: contrary to section 139 of the Crimes Act 2009.
  - B. Criminal Case No. 182 of 2023  
Abuse of Office: contrary to section 139 of the Crimes Act 2009.  
Obstructing the Course of Justice: contrary to section 190(e) of the Crimes Act 2009.
- (4) I am defending these cases and have entered a plea of not guilty in Criminal Case No. 548 of 2023 and also in Criminal Case No. 182 of 2024.
- (5) I am subject to identical bail conditions in the above cases. One of these conditions was the surrender of my passport to ensure that I stay within the jurisdiction.
- (6) I have surrendered my Fiji passport no. P00127089 to the Magistrates Court Registry, Suva as part of my bail conditions.
- (7) I have fully complied with all my bail conditions. I have no history of breaching any bail condition.
- (8) My permanent place of residence is at Lot 1 Mount St Mary’s Crescent, Martintar, Nadi, Fiji. I reside in this property with my wife and three children aged 7, 10 and 12.
- (9) My parents, brother and his family also reside in Fiji.

- (10) I am a Legal Practitioner by profession and I own and operate a law firm by the name of Khidmat Law in Westfield Subdivision, Nadi.
- (11) I also own a property in Namadi Heights in Suva and have shares in companies that own properties in Korotogo, Sigatoka and Wailoaloa, Nadi.
- (12) I had applied for variation of my bail conditions last year so I could travel to Singapore for my medical review. All my medical records, doctors' notes and test reports are held with my doctors in Singapore.
- (13) On 13 September 2023, the Magistrates Court in Suva had granted a variation and  
I was permitted to travel for my medical review. A copy of the Bail Ruling is annexed and marked 'A'.
- (14) During my last medical review in Singapore, I was diagnosed with hydronephrosis  
and right pelvic ureteric obstruction. I required an urgent procedure on my right kidney through endoscopic dilatation and temporary insertion of J stent. Without this procedure being performed, I was at the risk of losing my kidney. During this procedure, a severe obstruction was found in my right kidney and I required further definitive surgery. In November 2023, I underwent robotic pyeloplasty and during the robotic surgery a further J stent was inserted. During the robotic pyeloplasty I also underwent a bilateral varicocelectomy. The J stent was taken out in December 2023.
- (15) I returned to Fiji and surrendered my passport with the Magistrates Court Registry  
as required by the Magistrates Court.
- (16) I have been experiencing immense pain in my right kidney, where the procedures and surgery were performed, low energy levels, chest pains, breathlessness, dizziness and near fainting.
- (17) Following the urgent procedures and surgery that I had undergone in Singapore last year, I was due for a medical review in March, but could not travel as I was in between CID interviews and a further criminal charge [Suva Magistrates Court, Criminal Case No. 182 of 2024] being laid against me.
- (18) I had applied for variation of my bail conditions on 7 June 2024 and the State had objected to my travel. After a hearing was conducted in the Suva Magistrates Court, my application was denied. A copy of the Court's Ruling is annexed hereto and marked 'B'.
- (19) I had provided the court letters from my Singapore specialists, Doctor Chia Sing Joo of ML've UroCare Center who is my Urologist, and Doctor Dinesh Nair of Heart Matters Medical Center Pte Limited who is my cardiologist. Both Doctor Chia and Doctor Nair are based at Mount Elizabeth Novena Specialist Centre in Singapore and have previously performed the procedures that I have undergone for my kidney and heart-related matters. My review, examination and tests were scheduled between 14 June and 1 July. I was unable to travel after my application for variation of bail conditions was denied.

- (20) As per Doctor Chia's letter, I am required to undergo critically important and mandatory post-surgery review, further examinations, test and possible surgery depending on the outcome of the examinations and tests. Doctor Chia has advised that the kidney is a sensitive and vital organ that cannot be left untreated. I also have a history of kidney related issues.  
A copy of the letter from Doctor Chia of ML've UroCare Center at Mount Elizabeth Novena Specialist Centre in Singapore is annexed and marked 'C'.
- (21) As per Doctor Nair's letter, a CT coronary angiogram was performed on me on  
27  
September 2023 as I was experiencing chest pain. Results showed that there was 50% blockage in mRCA (mid-right coronary artery). At that time, I was advised to postpone my coronary angiogram or coronary angioplasty for 2-3 months as I had recently had the J stent inserted for my kidney problems. Doctor Nair has provided a letter confirming the above and a detailed background of my medical history, a copy of which is annexed and marked 'D'.
- (22) After the court had denied my application to travel to Singapore for my medical review, I visited Pacific Specialist Health Centre. I have been examined by Doctor Patel, who is a local urologist and has been accepted as a specialist by the State in my previous application for variation of my bail conditions. I have been advised by Doctor Patel that I urgently require specialized nuclear medical renal scans combined with other imaging modalities is needed for surgical planning. Doctor Patel has provided a letter setting out by medical status and a copy of his letter is annexed hereto at paragraph 'E'.
- (23) On page 2 of his letter, Doctor Patel states:

*"Interpretation of his investigations shows biochemically there has been progressive deterioration of his renal function (decreasing eGFR and rising creative). On ultrasound when compared to his left kidney, his right kidney is smaller in size, shorter cortical thickness and moderate hydronephrosis which is indicative of pressure atrophy of right kidney. The CT sound scan findings is suggestive of right PUJ obstruction. Going forward he needs to have specialized imaging by way of renal nuclear medical scans such as technetium-99 diethylene triamine penta-acetic acid (Tc-99m DTPA) and Technetium-99m mercaptoacetyl triglycine (Tc-99m MAG3) to describe the degree and pattern of obstruction, split renal function, and flow of the radioactive agent. These specialized scans are not available in Fiji. This specialized imaging combined with other imaging modalities is needed for surgical planning immediately. In summary based on his history of intermittent right flank pain, deteriorating renal function and with persistent of dilated renal pelvis and calyceal system he had recurrence of his PUJ obstruction which is adversely affection his daily quality of life, family life and professional livelihood. Despite having a pyeloplasty which is corrective surgery to his right PUJ obstruction a small portion of patients develop post-operative stenosis at the site of repair. If left untreated he would have recurrent infections, deteriorating renal function, renal stone formation, and pressure atrophy which ultimately lead to him losing his kidney. He needs specialized nuclear medical renal scans urgently to adequately plan the next steps of his treatment."*

- (24) I was also examined by Doctor Omar Niazi at Heart International Hospital. Doctor Niazi had recommended cardiac interventional management in when I was admitted in Oceania Hospital in 2018. I am advised by Doctor Niazi that I urgently require a holter monitoring study undertaken in relation to my cardiac issues. He has advised me that holter monitor and electro physiologists are not available in Fiji and that my cardiologist in Singapore can make these arrangement. Annexed hereto and marked 'F' is a letter from Doctor Niazi setting out a problem list, list of medication I am taking and encloses test reports.
- (25) At page 2 of his letter, Doctor Niazi states:
- "In view of the above mentioned, detailed history, clinical examination and investigations review, I have opinion that he needs urgent holter monitoring study to assess and quantify VPC's burden followed by electro physiologist review. As holter monitor and electro physiologist are not available in Fiji so he is recommended immediately go overseas for holter monitor and to be reviewed by the electro physiologist. His cardiologist in Singapore can make these arrangements.*
- In view of his frequent episodes of chest heaviness, palpitations, complicated with dizziness and near fainting can lead to sudden cardiac arrest and undesirable consequence (death)."*
- (26) Following the court's ruling of 19 June 2024 on my application for variation of my bail conditions, I have received confirmation and clarification from my Singaporean doctors on matters relating to their signatures, reference numbers, and placement of official doctor's stamps. These matters were raised by the State during the hearing in my previous application and I had asked my doctors in Singapore to confirm and clarify these matters. Annexed hereto and marked 'G' and 'H' are letters from Doctor Nair and Doctor Chia.
- (27) These letters also state that my appointments are now rescheduled between 21 July 2024 to 7 August 2024.
- (28) My purpose for seeking a variation to my bail conditions is to allow me to get proper medical care and treatment at my own expense so that I can be healthy and free from medical ailments when I return to Fiji.
- (29) I respectfully seek leave of this Honorable Court to vary my existing bail conditions to allow the release of my passport to me and to grant me leave to travel out of Fiji.
- (30) I am hoping to travel as soon as I get clearance from the court as my doctors have scheduled my tests, reviews and examinations between 21 July 2024 to 7 August 2024. I intend to return to Fiji upon the conclusion of my tests, reviews and examinations, and any procedures which are to be performed following the results of these tests, reviews and examinations.
- (31) I undertake to return to Fiji and to complete my pending cases. I have entered a

not guilty plea in both cases. I want to be healthy to contest both cases and clear my name.

(32) I have very firm ties with Fiji. My children, my wife, my parents, my brother and his family and my personal property interests are all in Fiji.

(33) I do not hold any other citizenship or permanent residency in any other country.

(34) Previously, the court had said that due to the serious criminal charge I could be considered a flight risk. I refute this with the following:

- a. I have no history of absconding from bail.
- b. I have not breached my bail conditions.
- c. I was allowed to travel by the court previously and I duly returned to Fiji after my treatment.
- d. I have shown my respect to court by honoring my undertaking to return to Fiji.
- e. I have attended court at every session.
- f. I have co-operated with the police.
- g. I have very strong familial ties to Fiji.
- h. My wife and children live permanently in Fiji.
- i. I am a very strong family person.
- j. My elderly parents reside in Fiji and I am very attached to them.
- k. I don't have permanent residence for any other country.
- l. I am not convicted for any offence.
- m. I have strong business ties to Fiji.
- n. I have property in Fiji.

(35) Previously, the State alleged that they had a strong case against me. This was uttered by Inspector of Police Dulaki without adducing any evidence. I refute any such allegation and opinion of a police officer. At the end of the day, the State has made certain allegations against me. I have refuted the allegations and have pleaded not guilty. Furthermore:

- a. I have denied the allegations.
- b. I have not made any admissions in my caution interview.
- c. In Criminal Case No. 548 of 2023 I am advised and believe that the charge is defective, and I was not employed in the civil service, and I did not authorize the payment of taxes to Mr Saneem. All payments were done by and authorized by the Office of the Fiji Elections Office.
- d. In Criminal Case No. 182 of 2024 I deny any alleged wrongdoing and say that I acted within my powers as a Minister to grant a waiver.
- e. I also deny any allegation that I somehow perverted the course of justice.
- f. I verily believe that I have very strong, arguable and robust defences to the allegations made against me.
- g. I am confident that I will ultimately prevail.
- h. I am determined to fight these charges.
- i. There is no great urgency shown by the State in these cases since the State waited for over 10 years to file one set of charges and twelve months in the other charge.

(36) I give my unequivocal undertaking to return to Fiji and to clear my name.

- (37) I believe that no prejudice will be caused to the State if my passport is released to me and I be allowed to travel.
- (38) I had not provided an itinerary when I had made the first application for variation of my bail conditions in 2023 as I wished to respect the court's process. This application was granted. However, during my last application the State had taken issue with this. For this reason, I have now obtained a proposed itinerary which shows the intended date of travel and intended date of return to Fiji. Annexed hereto and marked "I" is a copy of my proposed itinerary.
- (39) There is an urgency for my passport to be released to me so that I can confirm my attendance and arrangements for my travel and accommodation.
- (40) I am concerned about my health. I am informed by my local doctors that I cannot receive in Fiji the test and treatment that I require. My health and quality of life has significantly deteriorated and continues to deteriorate.
- (41) I humbly seek orders in terms of my motion filed herein.

#### **Evidence in Court of the Applicant/Accused**

[9] During cross-examination, his evidence is summarized as follows:

He has been feeling continuous immense pain from last year. He is on painkillers and antibiotics. There is no medical evidence to show that he has been to any general practitioners. There is no medical evidence to show that he has been to the Kidney or Heart Centre in Fiji. He is relying on his Singaporean doctors. He didn't feel the need to go the Kidney or Heart Centre in Fiji. Dr Chia doesn't state in his report that the medical examination/test is only available in Singapore. Dr Chia didn't provide his diagnosis of the pain that he is feeling. Dr Chia didn't recommend about further robotic pyeloplasty. Dr Nair recommended for blood testing but doesn't state in his report that it is only available in Singapore. Dr Nair didn't recommend for either holter monitor or for an electrophysiologist. He consulted Dr Patel twice and only one medical report was prepared by him. He didn't consult Dr Patel in July or August but he spoke to him. When he got suddenly sick on the last court appearance, he went to Oceania Private Hospital. Dr Patel was not available but he was consulted. He was given painkillers and antibiotics. He wasn't admitted at Oceania Private Hospital but was kept there till 10pm. Despite complaining of chest heaviness and palpitation for two months, he wasn't referred to any local general practitioner. He went to Dr Patel but he doesn't have any medical reports to confirm that. He went to Dr Niazi only once as well but he spoke to him. He regularly has kidney infections. He had his last scan in June 2024 and it doesn't solve the pain. After he goes on intravenous drips, his pain subsides until another kidney infection develops. He pays for his own medical costs. He disputes his medical record held by Oceania Private Hospital. He didn't have kidney problems in 2018 and 2019. He had his ECG done at Oceania Private Hospital on 1<sup>st</sup> August 2024 and this is not reflected in his medical record held by Oceania Private Hospital. Apart from that date, there is no record to show at



Oceania Private Hospital that he presented himself there with heart related issues. He doesn't recall if there is any extradition treaty between Singapore and Fiji. He doesn't intend to stay back in Singapore. He has his parents and wife and children and sibling here in Fiji. He needs to be in good health to defend his case. He's relying on the medical reports of Dr Patel and Dr Niazi to show his heart and kidney related issues.

During re-examination, his evidence is summarized as follows:

For his medical consultation on 1<sup>st</sup> August 2024 at Oceania Private Hospital, he was advised to discuss with a cardiologist and nephrologist. He had given the medical reports of Doctor Patel and Doctor Niazi to the doctor at Oceania Private Hospital. His ECG was done. He was prescribed medications for his heart related issues. He has been in contact with his Singaporean doctors. He has post-surgery complications. He was to have gone for his medical review to Singapore in March 2024. He is using the CPAP machine every night. He has been taking his prescribed medications. He had run out of his prescribed medications.

His friend's wife had brought it over for him from overseas. He had himself brought over six months' supply of prescribed medications. He is on heavy dose of prescribed medications. He has medical reasons to go out of the country. He is not a flight risk. He hasn't breached any of his existing bail conditions. He attends all his court matters. He is presumed innocent. He has a strong defence case. Resident Magistrate Savou allowed him to go out of the country for medical reasons. His wife, children, parents and sibling are all here. He understands that any breach of bail conditions can lead to him facing further charges. He has properties here. He holds shares in properties here. He doesn't have any other properties in any other country. He took a loan to pay for his medical expenses. He has his medical records in Singapore. He has his right to his choice of medical treatment.

### **Affidavit in Opposition of Sergeant 3414 Sunia Maniala**

[10] The supplementary affidavit of Police Sergeant 3414 Sunia Maniala is reproduced as follows:

- (1) I depose this affidavit from facts within my own knowledge and capacity, save except where it is according to information received by me or reasonable belief.
- (2) I have been in the Police Force for 24 years and I was tasked to gather information in relation to the present application.
- (3) The State objects to the application for bail variation for the following reasons:
  - a. There are two criminal cases pending against the Applicant in the Suva Magistrates Court in Criminal Case No. 182 of 2024 and Criminal Case No. 548 of 2023.
  - b. In Criminal Case No. 182 of 2024, the Applicant is charged with the offence of Abuse of Office and Obstructing the Course of Justice and in Criminal Case No. 548 of 2023 he is charged with Abuse of Office.

- c. The Applicant faces immediate imprisonment terms if he is found guilty of the said offences for both cases.
  - d. There is also a consolidation of charges hearing pending in Criminal Case No. 548 of 2023 which is scheduled for August 6, 2024 and the Applicant's attendance has not been excused for the said hearing.
  - e. [Expunged]
  - f. [Expunged]
  - g. [Expunged]
  - h. In Criminal Case No. 182 of 2024, there is strong evidence against the Applicant from the former Commissioner of FICAC, Mr Langman and the FICAC investigators that the Applicant's decision as the Attorney General had led to the investigation being shelved without any criminal charges being filed against Neil Sharma from 2012.
  - i. The State wishes to have this matter fixed for trial before December, 2024 as the date of the offence was in 2011 as such over 13 years has lapsed.
  - j. Despite the ownership of properties and business interests, the Applicant does not necessarily have to be in Fiji to dispose of his assets or conduct business. Annexed hereto and marked as "SM-01" are copies of the company interests and assets of the Applicant and his wife.
  - k. The Applicant also own a law-firm Khidmat Law. Annexed hereto and marked as "SM-02" is a copy of the registration. I am advised and firmly believe the same to be that the Applicant does not have to be in Fiji to run this law firm.
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- l. The Applicant on October 24, 2023 was in Singapore whilst on bail and he made payments from his BSP local account no: 83344693 to pay another BSP account no: 83362816. Annexed hereto and marked as "SM-03" is a copy of the said bank transaction. This confirms that he Applicant can deal with his personal financial obligation and interest whilst off-island.
  - m. The Applicant has described serious health symptoms and relies on Exhibit "F" from Doctor Patel. The State has concerns about the medical report by Doctor Patel and maintains his condition is manageable and is not an emergency.
  - n. I believe the Applicant is relying on old medical records from Singapore that he has submitted in Criminal Case No. 548 of 2023 which the Court has rejected. These are the same medical records that was submitted to Doctor Patel to provide a medical opinion.
  - o. [Expunged]
  - p. [Expunged]
  - q. [Expunged]
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- (4) The Applicant has not provided any sureties to ensure his return to Fiji.
  - (5) Fiji does not have any extradition agreement with Singapore as such should the Applicant fail to return, the State does not have any authority to secure his return.
  - (6) I believe the Applicant own a property in Sydney, Australia but he has made a decision to seek medical checkup in Singapore.
  - (7) The Applicant cannot move this Court to bind Magistrate Prasad in any bail ruling

made in Criminal Case No. 182 of 2024 as his bail variation application was denied by Magistrate Prasad on June 19, 2024.

(8) The application should be dismissed for the reasons as provided above.

[11] The further supplementary affidavit of Police Sergeant 3414 Sunia Maniala is reproduced as follows:

- (1) I depose this affidavit from facts within my knowledge and capacity, save except where it according to information received by me or reasonable belief.
- (2) On 31 July 2024 I had prepared a supplementary affidavit and in the same outlined the reasons for the State's position regarding the application for bail variation.
- (3) On 05 August 2024, I executed a search warrant at the Oceania Hospital and obtained the following relevant medical records of the applicant as follows:
  - a. The Plain CT Scan of Abdomen and Pelvis dated 21 June 2024;
  - b. The Blood test results of Sayed-Khaiyum, Aiyaz dated 06/01/20;
  - c. The Blood test results of Sayed-Khaiyum, Aiyaz dated 01/08/24;
  - d. The Medical Report Summary 2019 to 2020 dated 5 August 2024.
- (4) Annexed and marked as '**SM-03**' is the copy of the Plain CT Scan of Abdomen & Pelvis.
- (5) Annexed and marked as '**SM-04**' is the copy of the blood test results for 06/01/20 and 01/08/24.
- (6) Annexed and marked as '**SM-05**' is the Medical Report Summary from 2019 – 2020 & 2424.

#### **Evidence in Court of Sergeant 3414 Sunia Maniala**

[12] During cross-examination, his evidence is summarized as follows:

His affidavit was prepared by the Office of the Director of Public Prosecutions. He didn't read the affidavit in support of application for bail variation of the Applicant/Accused. He was briefed only by the Office of the Director of Public Prosecutions. He has been in the Police Force for 25 years. He works closely with the Office of the Director of Public Prosecutions. The Criminal Investigations Division chose to charge him after 13 years. He didn't respond when asked if one strong witness means to have a strong case against the Applicant/Accused. He can liaise with Interpol to bring back persons from Australia and New Zealand. He doesn't know that Singapore gives visa for a short term. He got his information from Intelligence Report that the Applicant/Accused owns a property in Australia. The case authority of *Waqalevu v State* was not brought to the court's attention by the Office of the Director of Public Prosecution. The search warrant to obtain the Applicant/Accused's medical report from the Oceania Private Hospital was not annexed.

#### **Affidavit in Opposition of Doctor Sireli Kaloucava**

[13] The supplementary affidavit of Doctor Sireli Kaloucava is reproduced as follows:

- (1) I make this Affidavit from the best of my knowledge and information obtained in the course of my work as a Consultant Urologist.
- (2) I have been a Consultant Urologist in Fiji for the past 14 years and I have worked in the public hospitals and currently in the private sector.
- (3) I am a specialist surgeon who treats patients who have problems with their kidneys, bladder, prostate and male reproductive organs.
- (4) I am also the Director of Pacific urology Centre which is a clinic located at 28 Sawau Street, Bayview Heights in Suva that provides treatment including surgery for the treatment of a variety of urological problems.
- (5) For the past 14 years as a Consultant Urologist and I have conducted hundreds of diagnosis, treatments and surgeries for all types of urological problems at the public hospitals in Fiji and in private practice. I continue to provide treatment and surgery based on the needs of my patients or upon request for any urological assessment.
- (6) With regards to my qualifications, they are as follows:
  - a. I obtained a degree in Bachelor of Medicine and Surgery (MBBS) from the Fiji School of Medicine in 1998.
  - b. I undertook further studies and acquired a Diploma in Surgery in 2002 and subsequently a Masters of Medicine in Surgery (MMED/SURG) from the Fiji School of Medicine in 2006.
  - c. After obtaining my Master of Medicine in Surgery, I undertook specialist training and underwent Urology Specialist Training in Christchurch, New Zealand.
  - d. I successfully completed the Urology Specialist Training in 2010 in Christchurch, New Zealand and I have been a Consultant Urologist for the past 14 years at the Colonial War Memorial Hospital and later in the private sector.
- (7) I was contacted by the Office of the Director of Public Prosecutions for expert advice on the urological condition of Aiyaz Sayed-Khaiyum after his inability to remain in Court on August 1, 2024 and this consequently led to my review and assessment of the report by Doctor Patel of Pacific Specialist Healthcare in Walu Bay.
- (8) I note the finding by Doctor Patel that there is high likelihood of the recurrence of Pelvic Ureteric Junction obstruction (PUJ).
- (9) I note the recommendation by Doctor Patel to allow the Applicant to travel to Singapore for further tests to confirm PUJ obstruction.
- (10) I have had an opportunity to review the report by Doctor Patel that relies on

Singaporean medical records for Aiyaz Sayed-Khaiyum together with clinical examination and a general CT scan. Annexed and marked as 'SK 1' is the copy of the report by Doctor Patel.

- (11) As a Consultant Urologist for the past 14 years, I am familiar with the diagnosis, treatment and surgery for Pelvic Ureteric Junction obstruction (PUJ). I have treated patients in Fiji for PUJ obstruction and we have locally available treatment and surgeries for PUJ obstruction depending on the needs of the patient.
- (12) Upon review of Doctor Patel's report dated June 2024, I would like to highlight the following inadequacies and flaws in the said assessment and my expert opinion are as follows:
  - a. The CT scan done was inadequate to confirm any obstruction because the CT scan done on June 21, 2024 was a non-contrast CT scan. A contrast CT scan is the best imaging test to differentiate between an active PUJ obstruction and a flaccid dilation. This is important because the Applicant has undergone previous surgery for PUJ obstruction which often leads to flaccid dilation because the kidney does not return to its normal size after the pressure has been relieved. As such, by general CT scan, a harmless flaccid dilation has the same appearance as a PUJ obstruction due to the dilation. Given the misleading nature of the general CT scan, we undertake a contrast CT scan to rule out flaccid dilation. In this case, a contrast CT scan was never done when it should have been the preferred test given the Applicant's medical history of pyeloplasty surgery for PUJ obstruction.  
As such, the CT scan report on June 21, 2024 is misleading and inaccurate. In the absence of a contrast CT scan, Doctor Patel cannot claim that there has been a recurrence of PUJ obstruction on his right kidney.
  - b. It is contradictory to compare the ultrasound scan done on June 19, 2024 showing moderate hydronephrosis to structural deterioration with a CT scan done on the 21<sup>st</sup> of June 2024 which shows mild dilation. This basically confirmed that there is structural improvement from moderate to mild.
  - c. The medical report indicating that the ultrasound scan finding a smaller right kidney and shorter cortical thickness fails to establish if these structural changes were present prior to the Robotic Right Pyeloplasty done on 7<sup>th</sup> November 2023 (MENH) or is if it is a recent structural change. A review of the Applicant's medical records prior to surgery and his current medical records, would provide a clearer picture of the health of his kidney.
  - d. The Doctor Patel report has suggested that the Applicant must undergo specialized imaging by way of renal nuclear medical scans to describe the degree of obstruction when obstruction is not confirmed in the first place.

- e. The report suggests that his renal function deterioration is due to PUJ obstruction however it fails to acknowledge that there are other possible causes of his renal function deterioration because the Applicant is a known hypertensive and with a history of cardiac bypass (CABG 06/03/2021 MENH). This also could affect his renal function.
  - f. The report only refers to a single renal function assessment (23<sup>rd</sup> May 2024) post PUJ repair and concludes that there has been renal function deterioration. Usually, regular clinical evaluation with renal functions blood test would be ideal to conclude declining renal function.
  - g. The report suggests that the applicant has been having right flank pain with occasional dysuria which may be suggestive of secondary infection however Doctor Patel failed to conduct a urine test to confirm any infection which would have been treated with antibiotics.
  - h. PUJ obstruction pain is a recurring and ongoing issue and not sporadic. I note that the only time the Applicant presented himself to Doctor Patel was on June 19, 2024 and there is no further review by Doctor Patel. This is uncommon because PUJ obstruction patients from my experience will repeatedly seek medical assistance due to the ongoing pain.
  - i. That anyone with right flank pain does not necessary mean that they have a PUJ obstruction.
- (13) There are alternative test available locally that would achieve the same results as the test sought by the Applicant in Singapore. There are alternative options for contrast CT scan for confirmation of obstruction and they are:
- i. IVP (Intravenous Pyelography)
  - ii. Cystoscopy with Retrograde Pyelography
  - iii. Ureteroscopy
  - iv. MRI
- (14) None of these alternative tests were done to confirm PUJ obstruction.
- (15) Fiji has the expertise to treat PUJ obstruction.
- (16) A simple cystoscopy and JJ stenting could be done to relieve the obstruction and alleviate the pain.
- (17) The most urgent risk associated with PUJ obstruction with infection and this needs to be addressed immediately with cystoscopy and JJ Stenting or a nephrostomy tube insertion.
- (18) The report failed to provide any evidence of associated infection and since the report by Doctor Patel did not recommend immediate treatment, this indicates that the Applicant's condition is not an emergency.

- (19) Fiji may not have the sophisticated tests available in Singapore but there are alternative options available locally that will achieve the same results.
- (20) Aiyaz Sayed-Khaiyum can be treated in Fiji because we have the expertise and facilities to treat PUJ obstruction.
- (21) The medical fees are much cheaper in Fiji compared to Singapore.
- (22) I strongly believe there is no recurring PUJ obstruction because the necessary scans tests have not been undertaken by the Applicant to substantiate his claims. Sequential imaging tests and blood tests are the best indicators of the overall assessment of the kidney in relation to its structural integrity and functional progress.

[14] The supplementary affidavit of Doctor Sireli Kaloucava is reproduced as follows:

- (1) I make this affidavit from the best of my knowledge and information obtained in the course of my work as a Consultant Urologist.
- (2) On 05 August 2024 I had prepared a supplementary affidavit and in the same stated my expert opinion in response to the report prepared by Doctor Patel.
- (3) On 05 August 2024, after 4.30pm I was shown the medical records of the Applicant namely the CT scan results dated 21 June 2024, Blood results from 2020 to 2024 and a medical report summary uplifted by the investigating officer from Oceania Hospital and hereby make further comments in support of my initial affidavit filed before the court.
- (4) A copy of the CT scan results from the Oceania Hospital dated 21 June 2024 was provided for my perusal, this is the same report mentioned by Doctor Patel on page 2 (c) '*CT abdomen – Non contrast*' in his letter dated 21 June 2024. Annexed and marked as '**SK 2**' is the copy of the Plain CT Scan of Abdomen & Pelvis.
- (5) The abovementioned results prepared by Doctor Agam Shrivastava of Oceania Hospital showed that both kidneys are normal in size, shape and location and the conclusion by the reporting radiologist could not confirm there was a PUJ obstruction.
- (6) The radiologist further advised for the use of a contrast scan for further evaluation.
- (7) I was shown the blood test results of the Applicant dated 06/01/20 and recent blood test results conducted on 01/08/24. Annexed and marked as '**SK 3**' is the copy of the plain CT scan of abdomen & pelvis.
- (8) THAT upon review of the blood test results, the renal function before surgery as per the blood test results dated 06/01/20 showed that the urea was 5.3 mmol/l and creatinine was 85.00 with calculated eGFRm" 94 mls/min however when compared to the recent blood test results dated 01/08/24, the urea was 5.3

mmol/l and creatinine was 79.00 mmol/l with calculated eGFR: 99 mls/min showing an improvement.

- (9) This further proves that the Applicant's kidney status is normal.
- (10) Upon further review of the blood test results of the Applicant dated 01/08/24, the Applicant had normal kidney function and normal blood count which would indicate that there was no associated systemic infection.
- (11) I was shown the medical report summary of the applicant prepared by Doctor John Alfred of Oceania Hospital dated 05 August 2024. Annexed and marked as 'SK 4' is the Medical Report Summary from 2019 – 2020 & 2024.
- (12) The abovementioned report shows that the Applicant has never presented himself to the Oceania Hospital with right flank pain until 01/08/24.
- (13) Despite being advised to have an ultrasound scan on 01/08/24 to investigate the said complaint of right flank pain, the Applicant refused to have an ultrasound scan conducted.
- (14) The ultrasound scan is important to verify the cause of the right flank pain, in the absence of such imaging test, there is no independent and credible results to substantiate the claim of the Applicant.

#### **Evidence in court of Doctor Sireli Kaloucava**

[15] During cross-examination, his evidence is summarized as follows:

He was asked to give his medical opinion. He didn't medically examine the Applicant/Accused. He accessed the medical reports of Doctor Patel and Doctor Niazi but not that of Doctor Chia and Doctor Nair. Different doctors have different medical opinions. Singapore doctors have more sophisticated medical equipment. He and Doctor Patel are top urologists in Fiji. The Applicant/Accused had health problems but it's been treated already. The obstruction needs to be confirmed first. To do this, there are less invasive and easily available tests here. The recurrence of PUJ hasn't been confirmed too. The correct scan machine was not used. There are medical protocols in place. To confirm PUJ or recurrent PUJ, certain tests has to be done. It can't be done with a plain scan. It has to be done with a contrast scan. Doctor Patel has not done a contrast scan. A plain scan will not show PUJ. There are lots of prescribed medications available for pain relief. If the Singaporean doctors are monitoring him, then its normal routine post-surgery. In medical practice, before any person is referred for treatment abroad, medical consultation takes place and right diagnosis has to be done here. He is a specialist doctor.

During re-examination, his evidence is summarized as follows:

The medical equipment and treatment is available here. The Applicant/Accused had medical problems and has been treated already. He has already had a PUJ repair. There are less invasive and easily available tests here. A CT scan with



contrast has to be done. It's all available here – intravenous pyelography, cystoscopy with retrograde pyelography, ureteroscopy and MRI.

## **Analysis**

- [16] This application before me is to determine the Applicant/Accused's application to vary his bail conditions to allow him to travel overseas for medical review. I have considered the the verbal and written submissions of the Defence Counsel and the State Counsel, the affidavits in support submitted by the Defence Counsel, the affidavits in opposition submitted by the State Counsel, the evidence heard in court during cross-examination and re-examination of the Applicant/Accused and that of Police Sergeant 3414 Sunia Maniala and Doctor Sireli Kaloucava,
- [17] Doctor Chia's report dated 23<sup>rd</sup> May 2024 confirms that the Applicant/Accused underwent medical procedures for his kidney related issues in October 2023 and November 2023. He remains in contact with Doctor Chia and his symptoms are being monitored. The doctor's report states the Applicant/Accused might be having pain due to new development, re-stenosis or post-surgery complications. His opinion is not confirming that there is a need for further medical surgery or treatment. The medical review was due in March 2024.
- [18] Doctor Nair's report dated 29<sup>th</sup> May 2024 confirms that the Applicant/Accused underwent medical procedures for his heart related issues in March 2021. He is under follow-up with Dr Nitish Mishra for low testosterone levels. He is also under prescribed medications. He has his CPAP machine with him for night use. A further CT coronary angiogram was done in September 2023 which revealed more blockages and it was recommended that angiogram and angioplasty is required to be done and blood tests. He has also been advised to continue with his prescribed medications.
- [19] Doctor Ganesh Ramalingam's report dated 2<sup>nd</sup> September 2023 confirms that the Applicant/Accused underwent 2 endoscopic procedures in February 2021 and 3 laparoscopic procedures in March 2021 in association with his heart related issues procedures in the latter month. The doctor's report states that since January 2022, he has not returned for medical review as he has been very busy with his work commitments. It's been stated that he will be required to come for his medical review for at least 2 – 3 weeks.
- [20] Doctor Patel's report dated 24<sup>th</sup> June 2024 after clinical consultation on 19<sup>th</sup> June 2024 reflected that the Applicant/Accused presented himself with intermittent right flank pain with occasional dysuria. He was of the view that he needs specialized nuclear medical renal scans after referring to the medical history of the Applicant/Accused in the reports of Doctor Chia and Doctor Nair. He has been taking Anarex and Arcoxia to help him with the pain.
- [21] Doctor Niazi's report dated 24<sup>th</sup> June 2024 after clinical consultation on the same day reflected that the Applicant/Accused presented himself with chest heaviness and near fainting episodes for the past 4-6 weeks. He was of the view that for urgent renal procedure, he has to be co-managed by the cardiologist and urologist and emergency specialist under one roof. His current prescribed medications were noted and he was

prescribed further medications. He's also of the view that he needs holter monitor and electro physiologist after referring to the medical history of the Applicant/Accused in the reports of Doctor Chia and Doctor Nair.

- [22] Doctor Shrivastava's report dated 21<sup>st</sup> June 2024 from Oceania Private Hospital refers to the plain CT scan (Abdomen & Pelvis) of the Applicant/Accused which reflects that both his kidneys are normal in size, shape and location and that there is evidence of minimal dilatation of right calyceal system and mild dilatation of renal pelvis with abrupt cut off at the pelviureteric junction. For this diagnosis, he was advised to go for contrast scan for further evaluation.
- [23] Doctor Fong's report dated 5<sup>th</sup> August 2024 from Oceania Private Hospital refers to the blood test results which reflects (RBCs) erythrocytes appear normal in distribution and morphology, (WBCs) leucocytes appear normal in distribution and morphology and (PLT) platelets appear adequate and normal in morphology.
- [24] Moving on from the doctors' reports, the Applicant/Accused was produced in custody in this matter in February 2024. There was no application made at that point in time to the resident magistrate not to issue a stop departure order against him as he had a medical review due if the urgency and necessity was so much.
- [25] The Applicant/Accused was granted bail variation by my brother magistrate to travel to Singapore for medical reasons in the other matter. That bail ruling was referred to and annexed by the defence counsel in his written submissions. The Applicant/Accused was allowed to leave the country from mid of September 2023 to end of October 2023. He was given one and half months to attend to his medical treatment. The Applicant/Accused had sought further time from that court as he was not able to return by end of October 2023 and was still having his medical treatment. As a matter of fact, he was given four months to undergo his medical treatment. He returned back to the country mid of January 2024.
- [26] At the time the Applicant/Accused was granted bail variation by my brother magistrate in the other matter, he was charged with the offence of Abuse of Office. This is a subsequent matter in which he has been charged with others for the offences of Abuse of Office and Obstructing the Course of Justice. All the charges are of a serious nature.
- [27] Still on the other matter, the Applicant/Accused was refused bail variation by my brother magistrate to travel to Singapore for medical review. That bail ruling was also referred to and annexed by the defence counsel in his written submissions. For a court to hear an application for variation to bail conditions, new or exceptional circumstances has to be submitted and the Applicant/Accused's reason being that a medical review in Singapore has already been decided by my brother magistrate. The same application is before me in this matter now with further rectifications of the doctors' reports that have been considered and decided upon already by my brother magistrate.
- [28] It is this court's considered view that there are no new or exceptional circumstances warranting variation to the Applicant/Accused's bail conditions to allow him to travel overseas for medical review. The Applicant/Accused underwent medical treatment for his heart and kidney related issues in Singapore already and Doctor Sireli Kaloucava,

being one of the two urologist consultants in Fiji confirmed that post treatment care are easily available here. According, his application is dismissed.

[29] 28 days to appeal.

On this 9<sup>th</sup> day of August 2024.

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**Sufia Hamza**  
**Senior Resident Magistrate**