

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL MISCELLANEOUS JURISDICTION

Criminal Case Nos: HAC080/08,
HAC081/08, HAC082/08, HAC087/08,
HAC088/08, HAC007/09, HAC015/09
Criminal Misc. Case No: HAM107/08,
HAM 006/09

BETWEEN:

THE STATE

AND:

SALENDRA SEN SINHA

Date of Hearing: 5th June 2009

Date of Ruling: 8th June 2009

Counsel: Ms V. Lidise for State
Mr. H.A. Shah for Accused

RULING

[1] This is a third application for bail pending trial by the accused. Two previous applications have been refused (see, **State v. Sinha** Cr. Misc. Case No. HAM 107/08 (2 December 2008); **Sinha v. State** Cr. Case No. HAM 006/09 (10 February

2009)). The accused is charged with multiple counts of fraud offences. No trial date has been fixed.

[2] Counsel for the accused submits that the accused had been in remand since September 2008 without a trial, which constitutes sufficient ground to grant bail.

[3] Whilst I accept that the remand period is a relevant consideration for bail pending trial, the ultimate test for bail pending trial is whether the accused is a flight risk.

[4] The two previous applications for bail were refused because this court found, as a matter of fact, that the accused was a flight risk. He had previously breached bail conditions by absconding the jurisdiction of Fiji and he had escaped from the police custody after he was remanded. Since the accused had breached his bail conditions, the presumption in favour of bail is displaced.

[5] The accused had been in remand for about 8 months without trial when this application for bail was made. In this regard section 13(4) of the Bail Act provides:

“If a person charged for an offence has been in custody for over 2 years or more and the trial of the person has not begun, the court must release the person on bail subject to bail conditions the court thinks fit to impose.”

- [6] Clearly the Bail Act allows for a remand for 2 years without an automatic entitlement to be released on bail.
- [7] After taking into account the submissions of counsel, I am satisfied that the remand period of 8 months is not so unreasonable to justify granting bail when the accused poses a high flight risk.
- [8] The application for bail pending trial is refused. However, if the accused is not tried by January 2010, he may renew his application for bail.

.....
Daniel Goundar
JUDGE

At Lautoka
8th June 2009

Solicitors:

Office of the Director of Public Prosecutions for State
Haroon Ali Shah for Accused