

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

**MISCELLANEOUS CASE NO: HAM 038 OF 2009**

**BETWEEN:**

**LAISENIA QARASE**

***Applicant***

**AND:**

**FIJI INDEPENDENT COMMISSION AGAINST CORRUPTION**

***Respondent***

Date of Hearing: 15<sup>th</sup> July 2009

Date of Ruling: 22<sup>nd</sup> July 2009

Counsel: Mr. A. Bale for Applicant  
Mr. A. Rayawa for FICAC

**RULING**

- [1] The applicant's bail conditions restrict him to travel overseas pending his trial in the High Court. His passport is in the custody of the court. The charges against the applicant are prosecuted by the Fiji Independent Commission Against Corruption (FICAC). The charges relate to abuse of office.
- [2] The applicant filed a Notice of Motion on 25 June 2009, seeking release of his passport and leave of the court to travel overseas. The reason advanced for the overseas trip is to raise funds to pay legal costs, which the applicant incurred in litigations challenging his removal from power as the Prime Minister on 6 December 2006.
- [3] The applicant wishes to travel to overseas countries including the United States of America, the United Kingdom, the Solomon Islands, New Zealand and Australia, as and when travelling and associated arrangements and expenses permit. He proposes to return his passport to the Chief Registrar within forty eight hours upon his return to Fiji in respect of each overseas visit.
- [4] The State opposes the application on two grounds. The first is that the applicant has previously breached his bail conditions, and the second is that the applicant is a threat to the national security.
- [5] Under the first ground, Mr. Rayawa submits that the applicant gave political speeches at public functions held in Australia when he was last permitted to travel overseas, which contravened the Public Order Act, but due to jurisdictional issue the applicant was not charged. It is Mr. Rayawa's contention that the applicant has breached his good behavior bail condition.

- [6] Mr. Rayawa further submits that the applicant has travelled to his island of Vanuabalavu on two occasions, when his bail condition is to reside at 6 Moti Street, Samabula until the conclusion of his trial.
- [7] The second ground was an extension of the first. Mr. Rayawa submits that the applicant could cause political instability in the country if allowed to travel overseas, which he uses for political motives.
- [8] Mr. Bale for the applicant submits that any concerns that FICAC has about the applicant's motive to visit overseas countries could be addressed by imposing stringent bail conditions. Mr. Bale further submits that the applicant's statements about threat to his life which he made at public functions in Australia were sympathy gestures and that he would not make such statements again. Finally, Mr. Bale submits that the applicant could be dealt by the court if he breaches any of his bail conditions.
- [9] The right to liberty is a basic human right. Bail for a person accused of an offence means authorization for the person to be at liberty instead of in custody, on condition that the person appears for trial. Conditional bail is granted as an alternative to pre-trial detention. Permissible conditions include the surrendering of travel documents, imposition of a residence requirement and the provision of a surety assessed in relation to the means of the accused. These restrictions on the right to liberty are consistent with international law (*Wemhoff v Germany* (1968) 1 EHRR 550).

[10] Bail must be granted unconditionally unless the court considers that conditions should be imposed for the purpose of:

- (a) ensuring the accused person's surrender into custody and appearance in court;
- (b) protecting the welfare of the community; or
- (c) protecting the welfare of any specially affected person.

(see s.23 of the Bail Act)

[11] In ***State v. Khan*** [2008] FJHC 62; HAC 009.2008 (11 April 2008) this Court adopted the following statements of Gates J (as he was then) in ***Iliaseri Saqasaqa v. The State*** HAM 005.06S:

"Bail conditions, imposing as they must restrictions on persons awaiting trial, must therefore be reasonable and commensurate with the gravity of the offence and with the individual risks identified as applicable. Bail must not be fixed excessively, in effect, denying the applicant an opportunity to take up the grant of bail. This has been a principle of great antiquity in the common law."

[12] In ***Seniloli v. State*** Criminal Misc. Case No. HAM029.04 the accused made an application for release of passport for overseas travel for medical review pending his trial. Gates J in granting the application said:

"This is an unusual application in that it comes on the eve of the trial and does not concern an already identified need for urgent medical treatment. However in weighing the various objections, I consider it more likely that the applicant will attend, and that he will not delay the start of that trial: section 17(2) Bail Act. Because of the view I take on attendance some relaxation of the conditions set

can be allowed. Applications based on these grounds may not always succeed however.”

- [13] 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.
- [14] The reason advanced by the applicant for the overseas trips is to raise funds to pay for his legal costs. I do not find the applicant to be a flight risk. He has always surrendered to the jurisdiction of the courts since he was charged. However, I am not satisfied that the applicant has shown a good cause to travel overseas. The applicant has led no evidence of any details of his legal expenses. Neither the applicant has made any point that he has no other means to pay for his legal expenses than to travel overseas and raise funds, nor has he made a case that he would be prejudiced in any manner whatsoever if he is not allowed to travel abroad.
- [15] The trial is pending before the court. It is in the applicant’s interests that the trial is heard without unnecessary delay and that the applicant remains in this jurisdiction pending his trial.
- [16] I hold that the bail condition restricting the applicant to travel overseas is not an unreasonable restriction on his right to liberty. In absence of showing good cause to travel overseas, the application is refused.

[17] Further, I make an order that if the applicant visits his island of Vanuabalavu, he notifies of his departure and return to both his counsel and FICAC.

Daniel Goundar  
**JUDGE**

At Suva  
22<sup>nd</sup> July 2009

**Solicitors:**

Messrs. Q.B. Bale & Associates for Applicant  
Office of the Commissioner for FICAC for Respondent