

**IN THE MAGISTRATES COURT OF FIJI  
AT TAVUA  
CRIMINAL JURISDICTION**

Criminal Case No: 49 – 2018

**STATE**

-v-

**SURENDRA CHAND SAHAY**

For Prosecution : WPC Chand and IP Lenaitasi ( Police Prosecution )

Defendant : Ms Preetika P.

Date of Hearing : 13<sup>th</sup> day of August 2018

Date of Ruling : 17<sup>th</sup> day of August 2018

**BAIL RULING – Bail Pending Trial**

**Background**

1. 1. The Applicant faces the following allegation:

Count 1 - driving a motor vehicle whilst there was present in his blood, a concentration of alcohol in excess of the prescribed limit contrary 103 (1) (a) and 114 of the **Land Transport Breathalyser and Analysis Regulation 2000**.

Count 2 – breach of bail condition contrary to section 25 (1) (c) and 26 (1) of the **Bail Act No. 26 of 2000** and **Bail Amendment Act No. 28 of 2012**.

1. 2. Count 1 was allegedly committed on the 10<sup>th</sup> of August 2018 Tavua. It is alleged that his breath contained 49 micrograms of alcohol which is equivalent to 107.8 milligrams of alcohol which is over the prescribed legal limit.
1. 3. Count 2 implies that the defendant has another criminal case pending and that he allegedly breached the bail conditions in that earlier case by committing count 1 of the allegation.
1. 4. The Applicant does indeed have another matter pending and that is Tavua Criminal Traffic File no. 554 – 14.
1. 5. In this file, he is faces a charge of failing to supply a sufficient sample of breath contrary to section 103 (2) (1A) (i) (ii) of the **Land Transport Act 1998**.
1. 6. This offence was allegedly committed on the 10<sup>th</sup> of August in 2014.
1. 7. He has pleaded not guilty to that case and is awaiting a new trial date.

1. 8. That is not the end of it.
1. 9. The Applicant also has another pending matter and that is Tavua Criminal Traffic File no. 398 – 16.
1. 10. In this case, he faces two counts.

Count 1 – Driving a motor vehicle under the influence of intoxicating liquor contrary to section 102 (1) and 114 of the **Land Transport Act 35 of 1998**.

Count 2 – Dangerous driving contrary to section 98 (1) and 114 of the **Land Transport Act 1998**.

1. 11. The offences were allegedly committed on the 17<sup>th</sup> day of July 2016 at Tavua.
1. 12. He has pleaded not guilty too in this case and is awaiting a trial date.
1. 13. He was granted bail in both his pending cases.
1. 14. In relation to his most recent case for which he now applies for bail pending trial (Tavua Criminal Traffic File 49 – 18 ), the Applicant was first produced under police custody on the 13<sup>th</sup> day of August 2018.
1. 15. He had been in police custody for 2 nights.
1. 16. He is represented by counsel but only for this bail matter, I'm informed.
1. 17. The prosecution objected to his bail.
1. 18. The court then held a preliminary enquiry to obtain information from the parties to allow it to make a bail ruling.
1. 19. The prosecution advised me that they will be relying on direct evidence of police who had waved the defendant down on the day in question but the defendant kept driving until he reached his home. The police followed him home and thereafter requested that he subject himself to a breathalyser test which the defendant did. The prosecution will also be relying on the breathalyser printout.
1. 20. In response, counsel for the Applicant accepts that the defendant drove home but that her client only drank alcohol after reaching home and before police arrived. Those were counsel's instructions.
1. 21. I noticed that the Applicant is mobile but with a help of a walking cane. I made enquiries with him and he told me that he does not take any special medication. He says that he is sickly most of the time but does admit that he drinks alcohol. He says that his leg for which he has trouble moving about and for which he needs a walking cane, is massaged every 2 or 3 days.

1. 22. His counsel tells me that the Applicant is able to comply with strict bail conditions if bail is granted. He has willing sureties. He is able to surrender his driving license. He is even willing to comply with curfew if it is imposed.
1. 23. It was also submitted that the Applicant looks after his son and in law.
1. 24. Counsel for the Applicant has also filed a written submission in support of their application for bail pending trial.
1. 25. The written submission largely reflects what was submitted in court and it is also submitted that the Applicant may spend more time in prison or in excess to than what he would have been sentenced to if he was found guilty.
1. 26. I remanded the Applicant to consider my decision on bail.
1. 27. Overall, the defendant so far would have been custody and or remand for approximately 7 days.

#### **ANALYSIS**

1. 28. Road accidents and fatalities is a global concern.
1. 29. In 2010, the United Nations General Assembly adopted resolution A/ RES/ 64 / 255 to establish the Decade of Action for Road Safety ( 2011 – 2020 ).
1. 30. In its commitment to this resolution, the Fiji government initiated its own National Action Plan with a view to first stabilize and then reduce this global and national pandemic.
1. 31. Setting up a committee involving the participation of Police, LTA, Ministry of Education and other partners was one facet of implementing this plan. Provision in the national budget to implement this plan is also available. There are other ways.
1. 32. There are various reasons why fatalities happen on our roads. Accidents can happen because of a mechanical defect, or a momentary inattention by the driver, in our Division here in the West, it can even be a cow crossing or being on the road.
1. 33. Drink driving cases are notorious too. This is when a drunk driver needlessly puts himself or herself and other road user's life at risk by getting behind the wheel.
1. 34. Too often have we needlessly lost lives on our roads because alcohol is involved.
1. 35. Understandably, it is a national and global concern.

1. 36. Traffic cases deserve the same and may in some instances, more respect as any other criminal offence.
1. 37. The Applicant is facing allegations in 3 different traffic files.
1. 38. All of them involve the allegation of the Applicant being the driver and all of them involve alcohol.
1. 39. The defendant is presumed innocent until proven guilty, but I cannot overlook the fact that there is a trend here.
1. 40. I'm satisfied that the defendant will re-appear in court and that he is capable of providing sureties and that he will surrender his driving license. This is all to his favour.
1. 41. There is a presumption in favour of bail but that is displaced if for instance, the Applicant breaches a bail condition.
1. 42. In file no. 398 – 16 for example, the Applicant was released on bail with a condition that he not re-offend.
1. 43. The **Bail Act 2002** at section 2 defines an 'offence' to include an 'alleged offence'.
1. 44. So for the purpose of bail, the presumption in favour of bail for the Applicant is displaced.
1. 45. Having the presumption displaced or rebutted does not necessarily mean that bail should automatically be refused. It just means that now, there is an equal chance of bail being either refused or granted.
1. 46. The factors outlined in section 19 of the **Bail Act 2002** is helpful when making this determination.
1. 47. He was waved by police but did not stop and so police had to follow him to his home. The Applicant said that he drank alcohol ( in their written submission, it was strong alcohol or whiskey ) just before police came and after he arrived home.
1. 48. I'm satisfied that at least in his most recent case, there is more than an arguable case against the defendant.
1. 49. He has been released on bail twice before and has now appeared the 3<sup>rd</sup> time. I take into account that this has been looming since 2014 but still, he is allegedly re-offending when out on bail pending his trial.
1. 50. The protection of the defendant and the community for me is paramount in his situation. Even if he satisfies me that he will reappear for his case, I must be mindful of the safety of the public too.
1. 51. I'm not satisfied that confiscating his driving license or imposing a curfew will remove this danger. He can still get behind the wheel.

1. 52. I'm satisfied too that he does not have any serious health issue and being remanded will not have any detrimental effect on him.
  
1. 53. As I said, the interest of the community outweighs his personal circumstance.
  
1. 54. Bail is refused to you Mr. Sahay and this I refuse with the view to protect the community.
  
1. 55. I can fix all your matters for trial early, to alleviate any concern that you may have about spending too long in remand.
  
1. 56. You have 28 days to appeal and or you can re-apply for bail.

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Lisate T.V Fotofili  
**Resident Magistrate**

Dated at TAVUA this 17<sup>th</sup> day of August, 2018.