IN THE HIGH COURT OF FIJI AT SUVA

APPELLATE JURISDICTION

CRIMINAL APPEAL CASE NO. HAA 34 of 2026

BETWEEN:

ARVIN KUMAR

Appellant

AND:

STATE

Respondent

Counsels: Ms. Naicker, C for the Appellant

Ms. Ram, Pream for the Respondent

Date of Hearing: 22nd September, 2026
Date of Ruling: 29th September, 2026

JUDGMENT

[1]. The Appellant, Mr. Arvin Kumar, through his Counsel has filed this Appeal against the further bail conditions imposed by the Learned Magistrate at the Nausori Magistrates Court.

[2]. The Appellant in Criminal Case number HAC 284 of 2024 was initially charged with one count of Rape which Prosecution later amended to one count of Sexual Assault and one count of Attempted Rape. The Appellant elected to have his case dealt with at the Magistrates Court. The High Court on 21st January, 2025 granted the appellant bail and returned file to the Nausori Magistrates Court.

[3]. On 2nd April, 2026 when the appellant pleaded not guilty to the charge, the Learned Resident Magistrate amended his bail condition to report to the Sigatoka Police Station every Saturday before 1.00pm and added another condition for Stop Departure.

Grounds of Appeal

[4]. The appellant being aggrieved with the above two bail conditions filed the following grounds of appeal;

(i). The Learned Magistrate erred in law and in fact when he varied the bail conditions for the applicant by imposing more severe conditions.

(ii) The Learned Magistrate erred in law and in fact when he varied the conditions of Bail when there were no changes to the circumstances of the case.

(iii). The Learned Magistrate denied the Accused the right to be heard when the bail conditions were varied to the prejudiced of the Accused.

(iv). The Learned Magistrate erred in law and in fact in imposing unfair, disproportionate and harsh bail conditions on the accused without conducting a hearing based on evidence for the same.

(v). The Learned Magistrate erred in law and in fact in not giving proper written reasons for his ruling.

(vi). The decision of the Learned Magistrate is unfair and unjust in the circumstances.

Applicant's Submission

[5]. The appellant submits that the bail conditions varied by Learned Magistrate on 2nd April, 2026 were initially fixed by the High Court on 21st January 2025. There was no application made to have the bail conditions varied.

[6]. In **Jone Lutumailagi & Mikaele Seru v State** HAM 16 of 2016 (High Court at Lautoka), Rajasinghe, J at paragraph 12;

> *"…the Learned Magistrate has no jurisdiction to revoke the bail that was granted by the High Court on the ground that the offence is an indictable offence."*

[7]. They further submitted that based on the above case law, the Learned Magistrate does not have jurisdiction to vary the appellant's bail.

Prosecution's Submission

[8]. The State concedes with the appellant's version that there was no application made before the Court to vary the appellant's bail condition.

Analysis

[9]. The essence of the Appellant's application is that the learned Magistrate varied his bail without any application made by any of the parties to do so.

[10]. The appellant should have filed an application for review of the Learned Magistrate's variation of bail.

[11]. Power to review a bail determination made by a Magistrate is conferred on this Court by **Section 30 (3)** of the *Bail Act of 2002.*

[12]. **Section 30 (7)** of the Bail Act reads as follows:

> *"A Court which 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 fresh application, refuse to hear the review or application."*

[14]. However, since this is an appeal and not a bail review against the Nausori Learned Magistrate's decision on bail this court will determine as to whether the conditions were justified. The Magistrate had added a new condition which is **"Stop Departure"** and varied the Reporting from last Saturday of the month to every Saturday and to report before 1.00pm.

[15]. The learned Magistrate is both entitled and bound to take account not only of 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.

[16]. In **Regina v Notingham Justices, ex parte Davis**; QBD (1981) QB.38;71 Cr.App.R.178 DC, the Lord Justice Donaldson said;

> *... The Court considering a fresh the question of bail is both entitled and bound to take account not only of 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? Are there new considerations which were not before the Court when the accused was last remanded in custody?...*

[17]. In this case, the High Court when initially granting bail to the appellant did not place a Stop Departure Order against him prior to returning the file to the Nausori Magistrates Court. Now that the case is before the Magistrates Court, the Learned Magistrate has the jurisdiction to include other bail conditions and is not bound by the bail conditions granted by the High Court as the charges has been amended to a lesser offence. Therefore the order for Stop Departure remains undisturbed.

[18]. The only bail condition the court finds unreasonable is based on the appellant's reporting time to the police station since the Appellant has not breached any condition thus far.

Order

[19]. Therefore, based on the aforesaid reasons, the appellant's bail conditions dated 2nd April, 2026 is partially varied as follows;

[1]. That the Appellant is to report to the Sigatoka Police Station on the last Saturday of the month between the hours of 6.00am and 6.00pm.

[2]. That the other bail conditions remain the same.

[20]. 30 days to appeal to the Fiji Court of Appeal.

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Waleen M George
Acting Puisne Judge

Dated at Suva this 29th day of September, 2025.

Solicitors: Saneem Lawyers, Suva – For the Appellant
Office of the Director of Public Prosecution, Nausori – For the Respondent