

IN THE HIGH COURT OF FIJI  
AT SUVA  
CRIMINAL JURISDICTION

Criminal Case No: HAM 067 of 2008

Between:                    ZIHARI RAFIQ KHAN                    Applicant  
  
And:                            THE STATE                                Respondent

Hearing: 23<sup>rd</sup> May 2008  
Ruling: 26<sup>th</sup> May 2008

Counsel: Mr. I. Samad for Applicant  
          Ms H. Tabete for State

BAIL RULING

The Applicant moves the High Court for bail under sections 17 and 19 of the Bail Act. She is charged on two counts, one of act with intent to cause grievous harm, the second of disabling in order to commit a felony. The affidavit of the Applicant does not set out the circumstances of the alleged offending. However in her submissions, State counsel said that the victim on the two counts is the Applicant's 14 month old baby.

The affidavit states that the offences arose out of a domestic dispute between the Applicant and her husband. She has been remanded in the Korovou Women's Prison since 5<sup>th</sup> May 2008. She has two children, one of whom is 3 years old. The other is the alleged victim. She is five months pregnant and asks for bail so that she can return to her family to give birth. She undertakes not to interfere with prosecution witnesses.

The prosecution called PPO Ana Wilikibau the Officer-in-Charge of the Women's Prison to give evidence. She said that she was aware that the Applicant was pregnant, that the Applicant shares the "Humility Block" with four other women, that there is a bathroom and toilet inside the block which is accessible for 24 hours a day, and that there is a television in the block. The daily programme for inmates is that they are locked in the block from 5pm to 6am. For the rest of the day there are meals, exercise programmes, sewing workshops and other activities. She said that the Applicant is not given heavy work because of her condition, that she has access to counseling services, and special facilities for keeping her baby after childbirth up to 6 years.

This is a difficult case. In normal circumstances, the Applicant would almost certainly be granted bail. She has no previous convictions, she is not a flight risk and she is pregnant with one infant child.

However, the difficulty arises from the fact that the alleged victim in the case is the Applicant's own child. In effect an order for bail would put the Applicant into close contact with the alleged victim. Furthermore, the Applicant called her husband Iiyaaaz Imaan, who is evidently a prosecution witness to give evidence on her behalf at the bail application. He said that he was visiting her daily in prison.

I accept that this case arose out of a domestic dispute. I accept also that the Applicant is not a flight risk. However I am also forced to accept that because she is alleged to have

committed acts of violence against her child, that her family is at the present time in need of protection from her. In these circumstances the public interest calls for her continued custody.

The best interests of her child also requires her continued custody. The United Nations Convention on the Rights of the Child, ratified by Fiji in 1993, requires that in all judicial and administrative decisions which affect children, the best interests of the child must be a primary consideration. Where a parent is alleged to have inflicted violence on the child, it must be in the child's best interests to be kept separate from the parent until guilt or innocence is determined by a competent court of law.

Having heard the evidence of PPO Wilikibau, I am satisfied that the Applicant is in remand conditions which are humane, that she is in no way at risk because of her pregnancy and that there are proper facilities for both pregnancy and medical attention in the remand centre at the Women's Prison.

For these reasons, bail is refused.



At Suva  
26<sup>th</sup> May 2008

  
Nazhat Shameem  
JUDGE

