

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

**Crim. Misc. Case No: HAM 086 of 2010**

**Between:**

**PETERO BAI**

**Applicant**

**And:**

**THE STATE**

**Respondent**

Hearing: 20<sup>th</sup> May 2010  
Ruling: 26<sup>th</sup> May 2010

Counsel: Ms B. Malimali for Applicant  
Ms P. Madanavosa for State

**RULING**

**Background**

- [1] On 26 March 2010, the Applicant was arrested on an allegation of rape. He was interviewed under caution and on 28 March 2010, charged with rape. On 29 March 2010, he appeared in the Magistrates' Court and was denied bail. On 12 April 2010, the case was transferred to the High Court because rape under the new law is now an indictable offence triable only in the High Court.

- [2] On 23 April 2010, the Director of Public Prosecutions filed the Information charging the Applicant with rape and with an additional count of attempted murder. Upon arraignment the Applicant pleaded not guilty to the charges. Since the case is in its early stages, no trial date has been fixed. However, it is likely that this case can be heard by the end of this year.

### **Bail application**

- [3] The Applicant applies for bail pending trial on the ground of conditions of his solitary confinement at the Korovu Remand Centre.
- [4] The State opposes the application and called evidence from Apimeleki Navuni, officer in charge of Korovu Prison on the conditions of the remand centre. Further, the State called evidence from Isoa Natui, police officer, who was involved in the investigation of this case. He denied any ill-treatment of the Applicant in the police custody during interrogation.
- [5] The Applicant gave evidence of conditions of his solitary confinement and of treatment by the prison officers in prison and in police custody during his interrogation.
- [6] Since the conditions of the remand centre and treatment of the Applicant by the State agents whilst in custody were contested issues, I shall return to them later in my ruling.

### **Bail principles**

- [7] Section 3(1) of the Bail Act creates a right to bail for an accused. This right is subject to restrictions justified in the interests of justice. Consistent with this right, section 3(3) of the Act declares that there is a presumption in favour of the granting of bail to an accused person, but a person who opposes the granting of bail may

seek to rebut the presumption. In determining whether a presumption is rebutted, the primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her.

- [8] Where bail is opposed, section 18(1) requires that the party opposing bail address the following considerations:
- (a) the likelihood of the accused person surrendering to custody and appearing in court;
  - (b) the interests of the accused person;
  - (c) the public interest and the protection of the community.
- [9] Section 19(1) of the Bail Act provides that an accused person must be granted bail by a court unless:
- (a) the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
  - (b) the interests of the accused person will not be served through the granting of bail; or
  - (c) granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.
- [10] Section 19(2) of the Act sets out a series of considerations that the court must take into account in determining whether or not any of the three matters mentioned in section 19(1) are established. Those matters are:
- (a) as regards the likelihood of surrender to custody –
    - (i) the accused person's background and community ties (including residence, employment, family situation, previous criminal history);

- (ii) any previous failure by the person to surrender to custody or to observe bail conditions;
- (iii) the circumstances, nature and seriousness of the offence;
- (iv) the strength of the prosecution case;
- (v) the severity of the likely penalty if the person is found guilty;
- (vi) any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country);

(b) as regards the interests of the accused person –

- (i) the length of time the person is likely to have to remain in custody before the case is heard;
- (ii) the conditions of that custody;
- (iii) the need for the person to obtain legal advice and to prepare a defence;
- (iv) the need for the person to beat liberty for other lawful purposes (such as employment, education, care of dependents);
- (v) whether the person is under the age of 18 years (in which case section 3(5) applies);
- (vi) whether the person is incapacitated by injury or intoxication or otherwise in danger or in need of physical protection;

(c) as regards the public interest and the protection of the community-

- (i) any previous failure by the accused person to surrender to custody or to observe bail conditions;

- (ii) the likelihood of the person interfering with evidence, witnesses or assessors or any specially affected person;
- (iii) the likelihood of the accused person committing an arrestable offence while on bail.

**Likelihood of surrender to custody**

- [11] The Applicant is 20 years old and unemployed. At the time of his arrest, he resided with his defacto wife and in-laws at Nauluvatu Settlement, Samabula. He has been residing at that address for the last three years. Originally, he is from Draubuta Village in Tailevu. He offers to reside with his grandmother at Nadali Village in Tailevu. He offers his grandfather as a surety. He is willing to abide by daily curfew hours between 6pm till 6am.
- [12] The State points out that the circumstances of the offences are quite horrific. The victim is an 8 year old school girl. The offences were allegedly committed within school premises inside a toilet on a school day.
- [13] The victim was bashed and sexually assaulted. She was found after a few hours in a critical and an unconscious condition. She was hospitalized and kept in intensive care unit. She is now released from the hospital but is so traumatized by the incident that she is unable to give a statement.
- [14] The prosecution says that the Applicant has made incriminating statements in his caution interview and two civilian witnesses put him at the close proximity to the alleged crime scene.
- [15] If the Applicant is convicted of the offences, the prosecution says a lengthy custodial sentence is inevitable.

- [16] The seriousness of an offence no doubt is a factor to be considered but it is not a factor that alone can form a ground to refuse bail. The presumption of innocence applies to every accused person, no matter how serious the offence is.
- [17] However, the presence of a combination of factors such as the seriousness of an offence, the strength of the prosecution case and the likelihood of a lengthy imprisonment sentence could operate as a strong incentive for an accused person to abscond the jurisdiction of court to avoid trial.
- [18] In the present case, the prosecution case cannot be considered weak. Of course, the Applicant is entitled to challenge every piece of prosecution evidence implicating him to the offences but, for the purpose of this application, I conclude the Applicant is facing a strong prosecution case.
- [19] Despite the Applicant having no previous history of absconding bail or breaching bail conditions, I am satisfied that the Applicant is unlikely to surrender to custody and appear in court to answer the charges laid against him if granted bail.

#### Interests of the Applicant

- [20] Clearly the conditions of remand centre are a factor relevant to the interests of the Applicant when determining bail.
- [21] In *Senjieli Boila and Pita Nainoka HAC 032 of 2004S* and in *State v. Eugene Tuni Ladpeter HAC19 of 2004S*, this court held that bail should be granted if the conditions of custody of an accused person awaiting trial amounts to inhumane and degrading conditions. The court referred to the UN Standard Minimum Rules and said the Rules "provide a barometer for judges as to the acceptability of prison conditions, and allow for some objectivity, based on international standards, in the assessment of prison conditions."

- [22] Apimeleki Navuni in his evidence said that the prison has a legal duty to ensure the safety of remand prisoners awaiting trials. In this case, the safety of the Applicant is a matter of concern for the prison because of the publicity the case has received and that the alleged victim's father is a serving prisoner and can risk safety of the Applicant through others, although he is kept in a different facility. For these reasons, the Applicant is kept separately from others in a security cell.
- [23] In his affidavit, the Applicant says he is willing to relocate to his grandmother's village as a measure to reduce the risk of assault from members of the victim's family.
- [24] The personal safety of prisoners whether they are inmates or remand prisoners awaiting trial is a matter for the prison. It is a decision that the court will be slow to intervene with in absence of showing of bad faith. It seems to me that the Applicant does not refute that there is a possibility of reprisal from the members of the victim's family and that there is a real risk to his personal safety.
- [25] However, the real contention is not his isolation from the remand prisoners but the conditions of his security cell and the treatment by prison officers.
- [26] The Applicant does not dispute that he has been provided with bed, sheets and pillow. He is allowed to shower daily and he is provided with meals. His complaints are that he is not given one hour daily exercise, his beddings have not been changed since he was remanded, and his meals are spat at and he is assaulted and mocked by the prison officers. He further says there are no windows in his cell, the light is switched off at night and he has to use a bucket to relieve himself.

- [27] Apimeleki Navuni denies that there was any ill-treatment of the Applicant by the prison officers. He said that the Applicant was medically examined in prison by the visiting medical officer on two occasions. The medical reports indicated no sign of any injuries or assault. He said that although the cell does not have windows, it has ventilations.
- [28] For the purposes of bail, I accept the evidence of Apimeleki Navuni. I find that the conditions of the remand are not inhumane and that the Applicant is treated with dignity in compliance with the UN Standard Minimum Rules for the Treatment of Prisoners.
- [29] I am satisfied it is not in the Applicant's interests for him to be released on bail for his own personal safety.

**Public interest and the protection of community**

- [30] At the time the Applicant allegedly committed these offences, he was serving a suspended sentence for theft related offences. The suspended sentence was imposed on 13 March 2009. The suspended period was two years imprisonment. Within one year of that suspended period, allegations of more serious offences have arisen against him. In my view the fact that the new offences appear to have been allegedly committed while the Applicant was serving suspended sentence is likely to be a factor of considerable importance against him when deciding whether there is a likelihood of him committing an arrestable offence while on bail.
- [31] Under this ground, bail is denied not merely because an accused person poses a risk of committing further offence while on bail. Bail is denied to the Applicant because he poses a substantial likelihood of committing an offence or interfering with the administration of justice, and that substantial likelihood endangers the



protection or safety of the community. I am satisfied that denial of bail to the Applicant is necessary to maintain confidence in the administration of justice.

**Result**

- [32] For the reasons that I have given, bail is refused. The Applicant will remain in custody on remand pending trial unless there is a material change in circumstances to reconsider bail.
- [33] The Applicant is advised that he has a right of appeal or review against this decision before the Court of Appeal.



  
Daniel Goundar  
**JUDGE**

At Suva  
26<sup>th</sup> May 2010

**Solicitors:**

Office of the Legal Aid Commission for Applicant  
Office of the Director of Public Prosecutions for State