

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

Crim. Misc. Case No: HAM 060/2013

BETWEEN : **VUNIYANI SOVAU**
APPLICANT

AND : **THE STATE**
RESPONDENT

COUNSEL : **Mr V Tamanisau for the Applicant**
Ms S Naidu for the State

Hearing Date : **05/04/2013**

Ruling Date : **10/04/2013**

RULING

1. The applicant **VUNIYANI SAVOU** had applied for bail pending trial.
2. The applicant has been charged for one count of Rape under the Crimes Decree No: 44 of 2009.
3. That applicant applied for bail pending trial in the High Court on 13th April 2011 and was granted bail on 2nd June 2011. The substantial matter was set for Pre-trial Conference and Trial on 8th February 2012 and 4th June 2012. Thereafter the case was adjourned for 7th March 2012 for Pre-trial Conference. On 7th March 2012, the Applicant was absent to court. Hence a bench warrant was issued. After 11 months of the bench warrant Applicant was arrested and produced before High Court on 7th February 2013.

Now the Applicant applies for bail pending trial on the following grounds:

- (1) That he is the sole breadwinner of his family.
- (2) That he is willing to provide sureties.
- (3) That the State finding difficulty in locating the prime witness.
- (4) That the trial had been vacated.

4. Section 3(1) of the Bail Act states that an accused has a right to be released on bail unless it is in the interest of justice that bail should not be granted. Consistent with this principle, section 3(3) of the act provides that there is a presumption in favour of the granting of bail to a person, but a person who opposes the granting of bail may seek to rebut the presumption.
5. In determining whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her. (17(2))
6. Where bail is opposed, section 18(1) requires that the party opposing bail addresses the following considerations:
 - (a) the likelihood of the accused person surrendering to custody and appearing in court;
 - (b) the interest of the accused person:
 - (c) the public interest and the protection of the community.
7. Section 19(1) of the bail act provides that an accused person must be granted bail by court unless:
 - (a) the accused person is unlikely to surrender to court custody and appear in court to answer charges laid;
 - (b) the interest 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.
8. 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. These 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)

9. State submits that the applicant has allegedly breached his bail conditions. He has not reported for police nor attended the court. Hence the trial was vacated. State fears that the Applicant may interfere with the prime witness as they have had a professional and personal relationship. State concedes that that some delay may occur in locating its witnesses.
10. The applicant was previously granted bail. But he has absconded bail for 11 months. During this period he has not changed his address nor changed his employer. He is the sole bread winner of the family.
11. The Applicant admits that he failed to report to the police station as per the previous bail condition. He could not do so due to his work schedule. Now regrets for his ignorance which led to his arrest.
12. I have considered the submissions of both parties. I am not willing to take the extreme step of revocation of bail and remanding the accused. The Applicant is given another chance. I grant bail subject to following additional conditions.
 1. The personal bond has been increased up to \$10000.00
 2. To provide two additional sureties. They must sign a bond of \$5000.00 each.
 3. All other bail conditions remain same.
13. 30 days to Appeal.

P Kumararatnam
JUDGE

At Suva
10/04/2013