

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

Crim. Misc. Case No: HAM 024/2013

BETWEEN : **VINAY PRAKASH SHARMA**

APPLICANT

AND : **THE STATE**

RESPONDENT

COUNSEL : **Mr T Ravuniwa for the Applicant**

Ms L Koto for the State

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

Ruling Date : **11/04/2013**

RULING

1. The applicant **VINAY PRAKASH SHARMA** had applied for bail pending trial.
2. The applicant has been charged for Rape under the Crimes Decree No: 44 of 2009.
3. That applicant applies for bail second time on following grounds:
 - (1) That he is falsely implicated to this case.
 - (2) That he is a religious worker making idols.
 - (3) That he has pending work for temples.
 - (4) That he is willing to provide sureties.
 - (5) That he is in remand for about 80 days.
 - (6) He has under gone a surgery.
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 raped his step daughter. The State is relying on direct evidence of the victim. State fears that accused will interfere with prosecution witnesses if bail is granted. A restraining order has been issued against the Applicant by learned Magistrate. But his wife had already met the Applicant in the remand prison. On the last two occasions victim was present before this court and wanted to withdraw the charge against the Applicant.
10. The applicant is 54 years old and is in remand for about 80 days. He undertakes not to interfere with prosecution witnesses. Now he is willing to change his residence until conclusion of this case. He has some medical problems. The complainant had already informed to court that she wants to withdraw the charge against the Applicant.
11. Rape is no doubt a serious offences but seriousness of the offence alone cannot form a ground to refuse bail.
12. In considering these matters, the court must bear in mind the presumption of innocence.
13. Having considered both parties submission I decided to grant bail on following conditions:
 1. To secure his own attendance at the High Court by standing in his own recognizance in the sum of \$3000.00 (Non-cash).
 2. To provide four sureties. They must sign a bond of \$3000.00 each. (Nazreen Rehana cannot be accepted as a surety)
 3. He has to move out from present address. New address is furnished before release on bail.
 4. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
 5. To surrender his passport if any to court and not to apply for a travel document. The Director of Immigration is informed of the travel ban on the applicant.
 6. To report to nearest police station every Wednesday and Sunday between 6am to 6pm.
 7. Not to leave Suva until the case is concluded.
 8. He is put on a night curfew between 6pm to 6am.

9. Any breach of these conditions is likely to result in cancellation of his bail.

14. 30 days to Appeal.

P Kumararatnam
JUDGE

At Suva
11/04/2013