

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

Misc. Case No: HAM 080/2013

BETWEEN : ESEROMA VAKACEGU

APPLICANT

AND : STATE

RESPONDENT

COUNSEL : Ms L Latu Applicant

Mr J Savou for the State

Date of Hearing : 11/04/2013

Date of Ruling : 12/04/2013

RULING

01. The applicant **ESEROMA VAKACEGU** had applied for bail pending trial.
02. The applicant has been charged with one count of Abduction of Young Person contrary to section 285 Penal Code and Two counts of Rape contrary to section 207 (1) (2) (a)(c) of the Crimes Decree No: 44 of 2009.
03. The Applicant applies for bail on following new grounds:
 - (1) That his parents are separated.
 - (2) That he wants to peruse higher education.
 - (3) He is the first offender.
 - (4) That he has a suitable surety.
04. 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.
05. 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))

06. 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.
07. 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.
08. 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)

09. The State opposes the bail. The State submits that the Applicant does not have fixed abode as his parents are separated. The Applicant on the pretext of going to Education Office accompanied the victim to an apartment and committed the offence. The victim was 16 years of age and a student of Suva Grammar High School. He had committed the offence while his friends were drinking in the same apartment.
10. The Applicant is 22 years old and is in remand for this case since 25/01/2013. He had studied up to form six. Now he is going to apply for Australian Pacific Technical College. He has a surety.
11. Rape is a serious offence which carries life imprisonment.
12. The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer charges laid against him.
13. Trial date has not been set. As per section 13(4) of bail act a suspect can be kept in remand for two years. Proposed surety of the Applicant had given a statement to police and expressed his unwillingness to be a surety for the Applicant.
14. Considering all these factors into account it is not in the interest of justice to grant bail to the Applicant.
15. Bail refused.
16. 30 days to appeal.

P Kumararatnam
JUDGE

At Suva
12/04/2013