

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 176 OF 2012S

**FRANK KONARE**

**VS**

**THE STATE**

**Counsels** : **Mr. J. Niudamu for State**  
**Mr. S. Waqainabete for Accused**

**Hearing** : **2<sup>nd</sup> November, 2012**

**Ruling** : **2<sup>nd</sup> November, 2012**

**Written Reasons:** **10<sup>th</sup> April, 2013**

---

**WRITTEN REASONS FOR REFUSAL OF BAIL**

---

1. On 13<sup>th</sup> April, 2012, in an earlier bail application, the court said as follows:  
**“...Given the above, the accused’s application for bail is denied. He is to be remanded in custody until the trial. Only in the most exceptional circumstance is he to be granted bail pending trial. I order so accordingly...”**
2. On 2<sup>nd</sup> October, 2012, the accused’s second bail application was filed and served on the prosecution. The application consisted of the notice of motion and an affidavit in support from the accused. The prosecution replied with a written submission on 29<sup>th</sup> October, 2012. The matter was heard on 2<sup>nd</sup> November, 2012. After considering the papers filed by the parties, including the

court file and the parties' submission, I declined the accused's application. I said, I would give my reasons later. Below are my reasons.

3. The fundamental question in a new bail application is whether or not, there is a change in circumstances, from when the first bail application was decided. The three factors considered in section 19 of the Bail Act 2002 must be looked at.

**(i) Factor No. 1: Likelihood of Accused Surrendering to Custody:**

4. Under this head, the accused's situation had not changed. He is an unemployed security worker. He has no previous convictions and no pending case against him. Although, he is presumed innocent until proven guilty beyond reasonable doubt, in a court of law, the State's case against him appeared strong. I understand that he is arguing consent to the sexual intercourse, but it appeared not to change the serious nature of the allegations against him. If found guilty, he faces a possible sentence between 7 to 15 years imprisonment.

**(ii) Factor No. 2: The Interest of the Accused's Person:**

5. The accused will be tried from 5<sup>th</sup> to 9<sup>th</sup> August, 2013. The trial is 3 months away. He has been remanded in custody since 24<sup>th</sup> October, 2011, that is, 1 year 4 months 15 days ago. However, if found guilty, time spent in custody while on remand will be deducted from the final sentence. I understand the accused is now represented by the Legal Aid Commission. His counsel can visit him in custody to take instructions. He's an unemployed security officer, and it appeared that there are no real reasons for him to be at liberty, for other lawful reasons. Nothing has changed under this head.

**(iii) Factor No. 3: Public Interest and the Protection of the Community:**

6. The allegations against the accused were very serious. It allegedly involved breaking into the complainant's home, while she was asleep, with her two children, in different bedrooms. The accused allegedly forced himself on the complainant, and raped her twice. He then stole her mobile phone. In November 2012, he allegedly interfered with the complainant, through her mother, and wanted her to withdraw her complaint. It would appear that, it is in the public interest

and the protection of the complainant, that the accused be remanded in custody until trial time. Nothing has changed under this head.

**Conclusion:**

7. Given the above, I refused the accused's second bail application on 2<sup>nd</sup> November, 2012, and the above are my reasons.

**Salesi Temo**  
**JUDGE**

**Solicitor for the Accused** : **Legal Aid Commission, Suva.**  
**Solicitor for the State** : **Office of the Director of Public Prosecution, Suva.**