

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

Crim. Misc. Case No: HAM 251/2013

BETWEEN : **MOSESE VUETI**
APPLICANT

AND : **THE STATE**
RESPONDENT

COUNSEL : **Mr J Savou for the Applicant**
Mr M Vosawale for the State

Hearing : **07/11/2013**

Ruling : **22/11/2013**

RULING

- [1] The Applicant Mosese Vueti applied for bail pending trial.
- [2] The Applicant has been charged for one count of Rape Contrary to Section 207(1) (a) of the Crimes Decree No: 44 of 2009.
- [3] That the Applicant is seeking bail on the following grounds:
1. That he has been in remand custody for almost 6 months.
 2. That he is the sole bread winner of the family.
 3. That his wife is looking after his children without proper income.
 4. That no one to look after his subsistence farming.

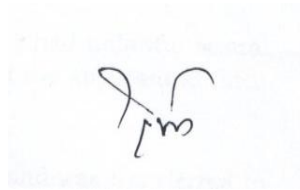
- [4] Section 3(1) of the Bail Act states that an accused has a right to be released on bail unless it is not in the interest of justice that bail should be granted. Consistent with this principle, Section 3(3) of the act provides that there is a presumption in favour of granting of bail to a person, but a person who opposes granting of bail may seek to rebut the presumption.
- [5] 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. (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)
- (b) as regards the interest of the accused person –
- (i) the length of time the person is likely to have remained 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 dependants);
 - (v) 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 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.

[9] The State opposes the bail. The State submits that the applicant committed this offence while he was on bail for similar offence committed in the year 2006. Respondent filed a copy of the charge sheet along with their response to this bail application. On perusal of the same it revealed that the charge sheet pertains to case No: 87/2007 was filed on 22/11/2007 in the Magistrate's Court at Lomaloma.

- [10] In the paragraph 8 of the affidavit filed by the Respondent stated that the applicant has a pending Lau Criminal Case CF 87 of 2007, where he has been charged with others also for an allegation of rape. The matter was last called in the Lau Court sitting and since the applicant and his other offenders never appeared, the court had issued bench warrant against the Applicant.
- [11] The Respondent failed to submit this court the last calling date of the pending case and the date of issue of bench warrant. The charge sheet has been filed exactly 6 years ago.
- [12] The Applicant was not granted bail in this case due to his pending case. There is no evidence presented to this court that he was produced before Lau Magistrate's Court while he was in remand custody since 15/02/2013.
- [13] The Applicant is 33 years old and is in remand for this case since 15th April 2013. He has a wife and two children to support. Further his subsistence farming has been neglected due to his incarceration.
- [14] Rape is no doubt a serious offences but seriousness of the offences alone cannot form a ground to refuse bail.
- [15] In considering these matters, the court must bear in mind the presumption of innocence.
- [16] Having heard both parties, I am not satisfied that the State has succeeded in rebutting the presumption in favour of granting of bail to the applicant. Interest of justice can be served in granting bail on strict conditions. I grant bail to the applicant on the following conditions:
1. To secure his own attendance at the High Court by standing in his own recognizance in the sum of \$1000.00 (Non-cash).
 2. To provide two sureties. They must sign a bond of \$1000.00 each.
 3. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
 4. To surrender his passport if any to court and not to apply for a travel document. The Director of Immigration to be informed of the travel ban on the applicant.
 5. To report to the nearest police station every Wednesday and Sunday between 6am to 6pm.
 6. Not to leave Fiji until the case is concluded.

7. The Applicant has to stay in Suva till the conclusion of his case.
8. Any breach of these conditions is likely to result in cancellation of his bail.
9. 30 days to Appeal.

A handwritten signature in black ink, appearing to be 'P Kumararatnam', is centered on the page. The signature is written in a cursive style with a large initial 'P' and 'K'.

P Kumararatnam
JUDGE

At Suva
22/11/2013