

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 188 AND 218 OF 2013S

MUBARAK HUSSAIN

VS

THE STATE

Counsels : Mr. S. Kumar for Accused
Ms. A. Vavadakua for State

Hearing : 2 September and 7 November 2013

Ruling : 2 September and 29 November 2013

Written Reasons: 21 March 2014

WRITTEN REASONS FOR DENIAL OF BAIL

1. In Suva High Court Criminal Case No. HAC 248 of 2013S, the accused faced the following information:

FIRST COUNT

Statement of Offence

BURGLARY: *Contrary to Section 312 and (3) (a) of the Crimes Decree No. 44 of 2009.*

Particulars of Offence

MUBARAK HUSSAIN on the 31 day of May, 2013 at Naselai Feeder Road, in Nausori, remained in the dwelling house of

ASHOK KUMAR as a trespasser, with intent to cause harm to another person named **K. W.**

SECOND COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MUBARAK HUSSAIN on the 31 day of May, 2013 at Naselai Feeder Road, in Nausori, had carnal knowledge of **K. W.**, without her consent.

THIRD COUNT

Statement of Offence

RAPE: Contrary to section 207 (1) and (2) (b) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MUBARAK HUSSAIN on the 31 day of May, 2013 at Naselai Feeder Road, in Nausori, penetrated the vagina of **K. W.**, with his tongue, without her consent.

FOURTH COUNT

Statement of Offence

SEXUAL ASSAULT: Contrary to section 210 (1) (a) and (3) (a) of the Crimes Decree No. 44 of 2009.

Particulars of Offence

MUBARAK HUSSAIN on the 31 day of May, 2013 at Naselai Feeder Road, in Nausori, unlawfully and indecently assaulted

K. W, by kissing her breasts, while being in possession of a knife.

2. He had been remanded in custody from 12 July 2013, when first called in the High Court. He had been in custody for approximately 8 months. He applied for bail twice in HAM No. 188/13 and 218/13, but both were refused. I said I would give my reasons later. Below are my reasons.
3. Every accused had a right to bail pending trial, unless the interest of justice requires otherwise. The test for bail is whether or not the accused will turn up in court, on the date arranged, to take his trial. However, in consider the above, the court is duty bound to consider the factors, mentioned in section 19 of the Bail Act 2002.

Factor No. 1: Likelihood of Accused's Surrender to Custody:

4. The accused is 40 years, single with no child. He is a printer earning \$150 per week. He resided with two brothers. He said, he is the sole bread winner for his family. His parents have died. According to the prosecution, they have strong evidence against him. The female complainant was allegedly blind-folded, tied with tapes and raped in her house, by an intruder, when her husband was away on 31 May 2013. When caution interviewed by police on 1 June 2013, the accused admitted the offences. If found guilty after trial, the accused faced a possible prison sentence of more than 10 years imprisonment. The chances of bail under this head, are slim.

Factor No. 2: Interest of Accused Person:

6. The accused will be tried from 8 to 12 June 2015, that is, approximately 1 year 2 months away. However, time spent in custody while on remand, will be deducted from his final sentence, if he's found guilty. There is a new remand facility in Suva, and he can enjoy the same while on remand. He is represented by an experienced counsel, and he can visit him in custody to take instructions and prepare his defence. There is no need for him to be at liberty for any other lawful purpose. He is not incapacitated. Under this head, the accused's chances of bail are slim.

Factor No. 3: The Public Interest and Protection of the Community:

7. The allegations against the accused are very serious. He allegedly broke into the complainant's house, at night on 31 May 2013. The complainant was alone in the house, while her husband was out. He allegedly forcefully tied up the complainant, and raped her. Although, the accused is presumed innocent until proven guilty beyond reasonable doubt, the public interest and the protection of the community required that he be remanded in custody until trial time. Under this head, the accused's chances of bail are slim.

Conclusion:

8. Because of the above, the court denied the accused's bail applications on 2 September and 29 November 2013. Accused is remanded in custody until further orders of the court.

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JUDGE

Solicitor for Accused : **Sunil Kumar, Barrister & Solicitor, Nausori.**
Solicitor for the State : **Office of the Director of Public Prosecution, Suva.**