

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**MISCELLANEOUS JURISDICTION**

**Cr. Misc. Case No: HAM 463/2013 (LTK)**

**BEFORE THE HON. CHIEF JUSTICE, MR. JUSTICE ANTHONY GATES**

**BETWEEN**

**SHIRI KRISHNA RAO**

***Applicant***

**AND**

**STATE**

***Respondent***

Counsel: Mr. A. Reddy for Applicant  
Ms J. Fatiaki for State

Date of hearing: Friday 3<sup>rd</sup> January 2014  
Date of Ruling: Friday 3<sup>rd</sup> January 2014

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**RULING ON BAIL**

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- [1] The applicant applies by notice of motion filed at Lautoka on 18<sup>th</sup> December 2013 for bail pending trial at the Lautoka High Court.
- [2] Since this is the legal vacation the matter has come before me in Suva. The Accused was able to hear and view the proceedings in Suva by Skype from the Lautoka High Court. He is remanded at Natabua Prison. His counsel appeared before me with the Director's counsel here in Suva.

- [3] The applicant filed two affidavits in support. First he filed the affidavit of his mother, the complainant, Pachama and second that of his maternal uncle Bal Raj.
- [4] There was no affidavit in opposition filed by the State.
- [5] The applicant is charged with a single count of “acts intended to cause grievous harm.” This arose from an incident of domestic violence by a son against his mother, using a stick. He allegedly hit his mother on the left temple and left hand. During the course of his mother’s evidence before me, it appeared there were no remaining wounds or scars at either injury site and no continuing symptoms. The injuries though not medically described were thus fortunately slight.
- [6] However in cases such as these where bail is applied for, it is of great assistance for the Court, indeed essential, to be provided by the State with affidavit evidence going to the gravity of the assault and injuries. This may not have been Ms Fatiaki’s fault since I see the submissions for the State were compiled by another counsel.
- [7] Applications of urgency, or those made in the legal vacation, present administrative difficulties in the path of prosecutors or police investigators. Nonetheless corners must not be cut. Bail issues must be addressed properly and necessary evidence placed before the court.
- [8] Issues of importance here are the extent of the injuries inflicted and the gravity of the assault. Relevant circumstances when considering the likelihood of the Accused surrendering to custody are “the circumstances, nature, and seriousness of the offence” [Section 19(2)(a)(iii) Bail Act].
- [9] By not filing an answering affidavit the State fails to provide the court with sufficient evidence for the court to arrive at an informed decision. Such failure can result in a

further adjournment, and extra cost and inconvenience to the parties. In the instant case the Accused's family travelled down from Rakiraki to be at court.

[10] The State, in an injury case, should provide a medical report at least, and ideally a statement from the examining doctor on this issue. Was there also available independent evidence of the assault? Did the Accused admit the offence? How did it arise and happen? There is no evidence of any of this from the State, and statements made in submissions are improper without evidential foundation.

[11] The complainant mother was available at court and gave evidence. She was very distressed about the incident and her son being in custody. She was not angry. How he came to lose his temper, his exact medical circumstances, and the part played by his failure to take his medications supplied via St. Giles at Lautoka may doubtless feature in the case subsequently. I am not concerned with that at this stage. But I am concerned to ensure there be no further breach of the peace, no further incident of domestic violence, and to set an appropriate bail if it is correctly safe to do so.

[12] The injuries were minor, at least on the available evidence. There are of course domestic violence considerations and I think it prudent that the applicant not be returned to his mother's compound, at least to start with. I note he is a person without prior convictions.

[13] In the result, I grant the applicant bail on the following conditions:

- (i) Bail in his own recognizance in the sum of \$500.00.
- (ii) With 1 surety of \$500.00.
- (iii) To reside with his uncle Bal Raj and not to change his address without prior leave of the court or of the Director of Public Prosecutions.
- (iv) To follow the directions of the treating doctors and to take his prescribed medicines.

- (v) To attend court for his trial and for any mentions when called upon to do so.
- (vi) To report to Tavua Police Station every Saturday between the hours of 7am and 4pm.

A.H.C.T. Gates  
**Chief Justice**

At Suva  
3<sup>rd</sup> January 2014

**Solicitors**

For the Applicant: Messrs. Reddy & Nandan, Tavua

For the Respondent: Office of the Director of Public Prosecutions, Lautoka and Suva

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