

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

CRIM. MISC. CASE NO: HAM 067/2014

BETWEEN : SEMI RAIQISO
APPLICANT

AND : THE STATE
RESPONDENT

COUNSEL : Mr S Waqainabete for the Applicant
Ms S Kant for the State

Date of Hearing : 04/06/2014

Date of Ruling : 13/06/2014

RULING

- [01] The applicant Semi Raiqiso had applied for bail pending trial.
- [02] The applicant has been charged for one count of Rape pursuant to Section 207 (1) (2) and (a) of the Crimes Decree No.44 of 2009.
- [03] The applicant applies for bail for the second time on the following grounds:
- (1) That he is the sole breadwinner of his family and has a child.
 - (2) That he is willing to provide sureties.
 - (3) That he is in remand from 26/11/2013.
- [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 to 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
 - (iii) the circumstances, nature and seriousness of the offence; observe bail conditions;
 - (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] State submits that this is the second bail application of the Applicant. He was granted bail on 28/08/2013. In the month of November 2013 he was arrested for assaulting his parents. As he had committed another offence whilst on bail, his bail was cancelled and remanded since 26/11/2013. That case is still pending before the lower court.
- [10] The applicant is 42 years old and is in remand for seven months. He is the sole bread winner of the family. He has a small child to support. Earlier he was granted bail on 28/08/2013. But it was cancelled as he was arrested on the allegation that he assaulted his parents. That case is still pending before the lower court. The trial date in the substantive matter has been fixed. He has not interfered with any prosecution witnesses directly or indirectly.
- [11] Rape is no doubt a serious offences but seriousness of the offence alone cannot form a ground to refuse bail.
- [12] In considering these matters, the court must bear in mind the presumption of innocence.
- [13] 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. There are some new grounds exists in this case. Hence, 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 (Non-cash).
 - (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 is informed on the travel ban of the applicant.
 - (5) To report to the nearest Police Station on every Wednesday and Sunday between 6am to 6pm.
 - (6) Not to leave Suva until the case is concluded.
 - (7) Any breach of these conditions is likely to result in cancellation of his bail.

[14] 30 days to Appeal.



A handwritten signature in black ink, appearing to be "P Kumararatnam".

P Kumararatnam
JUDGE

At Suva
13/06/2014