

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

**CRIMINAL MISCELLANEOUS CASE NO: HAM 91 OF 2015**

**BETWEEN** : **UMESH CHAND**

*Applicant*

**AND** : **STATE**

*Respondent*

**Counsel** : **Ms. Q. Vokanavanua for Applicant**  
**Mr Niudamu for Respondent**

**Date of Hearing** : **09 June 2015**

**Date of Ruling** : **10 June 2015**

**BAIL RULING**

1. The applicant has filed this Notice of Motion for Bail supported by an affidavit on behalf of his son Umesh Chand who is charged for the offence of Rape contrary to Section 207 (1) (2) (a) of the Crimes Decree No. 44 of 2009.
2. The State has filed its response, supported by an affidavit of WDC Irene of the CID, in order to rebut the presumption and objected to bail being granted to the accused on the grounds stated therein.
3. In the submission filed, the State has dealt with all the grounds stated in Section 18 (1) of the Bail Act and seeks to displace the presumption in favour of bail.

4. The presumption in Section 3 (3) of the Bail Act in favour of granting of bail can be displaced when there are valid grounds for detention.
5. According to Section 3 (1) of the bail Act, every accused has a right to be released on bail unless it is not in the interests of justice that bail should be granted.
6. It is clear that the right to bail guaranteed to an accused under the Bail Act is conditional upon the primary consideration of interest of justice.
7. Justice is for all. Not only for the accused, but for everybody who would be affected by his or her conduct, victims, witnesses and the society (potential victims) as a whole.
8. I now venture into consider each of the criteria in Subsection 18(1), dealing with the submission made on each one.

*Likelihood of the accused person appearing in court to answer the charge laid against him.*

9. According to Section 17 (1) of the Bail Act, the primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charge laid against him.
10. The applicant's son (the accused) has 23 previous convictions; four of which are in respect of forfeiture of bail bonds and three of which are in respect of escaping from lawful custody, all the convictions point to the accused's propensity to evade court.
11. Charge against the accused is serious and carries a maximum punishment of life imprisonment, if found guilty.

12. In these circumstances there is a strong likelihood of the accused not appearing in Court if bail is granted.
- 13.
- As regards the interests of the accused person, the applicant states that:*
- (a). the accused is 35 years old sole breadwinner of his family. He is separated from his wife and fathering his 17 year old daughter whose education is to be greatly affected.
  - (b). being in remand for a long period, the accused will lose his customers in carpentry and entire livelihood that supports the entire family.
  - (c). the accused has been assaulted in the prison.
14. Difficulty faced by the family, per se, whilst the accused is in remand, is not a valid ground for consideration of bail. Accused's daughter is grown up (17 years old) and is in the care and custody of her grandparents.
15. The accused has already retained a counsel and is guaranteed a fair trial, despite his detention.
16. The medical report PC.1 annexed to the applicant's affidavit does not support the allegation of assault in remand prison. The accused, relating the history to the doctor who examined him on 11.05.2015, has stated that he was assaulted in the court house cell by Fijian boys. The doctor who examined the accused on 19.05.2015, whilst he (accused) is in remand, states in his special medical findings, marked D(12), that .. *"these injuries were noted on the prisoner's report dated 11.05.2015. No other new injuries"*.
17. Hence, allegation of assault in remand prison is unfounded and far from truth.

18. I perused the authority, Naba v The State (2001) FJHC 127, cited by applicant's counsel. It has nothing to do with the present application. The case cited deals with inhumane condition of Natabua prison at that time (in 2000). The applicant's grievance is that he was assaulted by prison officers whilst in remand, not the condition of the prison.
19. Justice Shameem in her ruling in Suresh Sani and Deo Raj v State (Mis Case No. HAM 37 Of 2003) has refused to consider lack of basic necessities in prison as a valid ground for bail.
20. Interest of the accused and the right to a fair trial are not badly affected by not granting him bail.

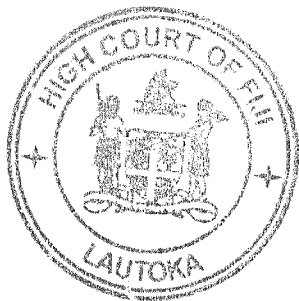
*As regards the public interest and the protection of the community,*


21. The accused is alleged to have committed the present crime whilst another case is pending against him in the Magistrate's Court. (Annex 2).
  22. The accused has a history of violating bail conditions and escaping from lawful custody (Annex1).
  23. There is a high risk of reoffending if granted bail.
  24. Hence, refusal of bail would be in the interest of the public and for the protection of the community.
  25. In Isimeli Wakaniyasi v. The State (2010) FJHC 20; HAM 120/2009 (29th January 2010) Justice Gounder (referring to three grounds in the Bail Act) stated .....
- “All three grounds need not to exist to justify refusal of bail. Existence of any one ground is sufficient to refuse bail.”

26. I am convinced that protection of the community and the public interest would be in jeopardy if the accused is granted bail.

27. For foregoing reasons, the application for bail pending trial is dismissed.

28. 30 days to appeal.



  
Aruna Aluthge  
**Judge**

**At Lautoka**  
**10<sup>th</sup> June 2015**

**Solicitors :** **Iqbal Khan and Associates for Applicant**  
**Office of the Director of Public Prosecutions for Respondent**