

IN THE HIGH COURT OF FIJI
AT LAUTOKA
MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 133 OF 2015

BETWEEN : **UMESH CHAND**

Applicant

AND : **STATE**

Respondent

Counsel : **Applicant in Person**

Mr. S. Babitu for Respondent

Date of Hearing : **10th August 2015**

Date of Ruling : **14th August 2015**

BAIL RULING

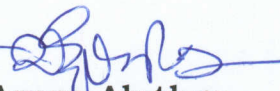
1. The Applicant is charged with one Count of Rape contrary to Section 207 (1) (2) (a) of the Crimes Decree No. 44 of 2009 and two other ancillary Counts. He has filed this Notice of Motion for Bail. This is his 2nd Bail Application presented to this Court.
2. This Court has refused the previous bail application by the Applicant's father on 10th June 2015.
3. According to Section 14(1) of the Bail Act, an accused can make any number of bail applications.
4. On a second or subsequent application for bail, judge who considers the same need only ask first whether there had been a material change in circumstances since the original order. If there had been no change,

there was no need to look at the facts underlying the previous refusal of bail.

5. Most of the grounds advanced by the Applicant are similar to the grounds submitted in his previous bail application except two.
6. Apart from the grounds advanced by his previous bail application, the Applicant has submitted two new grounds which show a change of circumstances namely;
 1. His elderly mother is suffering from cancer and his step father is suffering from Asthmatic condition. They are in need of his financial and moral support.
 2. His *de- facto* partner has given birth to a child who is in need of financial and medical support form father as the sole bread winner.
7. The State has disputed the authenticity documents tendered by the Applicant in support of his mother's health condition on the basis that the name given in the medical report does not show that the patient is the mother of the Applicant. However, the mother of the Applicant was present in Court when the matter was taken up for hearing and confirmed that she is the biological mother of the Applicant and is suffering from Cancer. Applicant had been adopted by one Deo Mat. Adoption Order submitted by the Applicant confirms that his biological mother is Lalit Kuar, whose name appears in the medical report.
8. I am satisfied that the patient named in the medical report is the Applicant's mother.
9. *De facto* partner of the Applicant was present in Court and confirmed that the Applicant is the father of the newly born child she gave birth to.
10. Having considered the new material placed before me, I am satisfied that there is a change in circumstance which justify interference with the earlier bail determination. Newly born child and his sickly mother are in moral and financial support of the Applicant. Best interest of the Applicant and his newly born child would be served by granting bail to the Applicant.

11. Applicant has already spent considerable time in remand. Trial day is yet to be fixed. Trial diary of this Court is fully booked until August 2016. When making a bail determination, Court must take into account the time the accused may have to spend in remand before trial, if bail is not granted. [Section 17(1) of the Bail Act].
12. Having considered all the aspects, Court decides to grant bail to the Applicant on following conditions.
 - a. Personal Bail for FDJ 1000
 - b. Surety Bail for FJD 1000 with two sureties.
 - c. Not to reoffend.
 - d. Not to interfere with the victim and witnesses.
 - e. Must report to Lautoka Police Station on every Saturday between 8 a.m. and 4 p.m.




Aruna Aluthge
Judge

At Lautoka
14th August 2015

Solicitors: Applicant in person
Office of the Director of Public Prosecutions for the Respondent