

raped the complainant between 9 and 10 October 2013, when he penetrated the complainant's anus, without his consent, at Cakaudrove in the Northern Division.

2. He had previously applied for bail in Miscellaneous Case no. 7 of 2015, wherein the same was dismissed on 13 March 2015. He now applies for bail on a second occasion. The question is really whether or not the circumstances had changed.
3. It is well settled an accused person is entitled to bail pending trial, unless the interest of justice requires otherwise. The test for bail was whether or not the accused will turn up in court, on a date arranged to take his trial. When deciding this issue, the court is duty bound to consider the factors mentioned in section 19 of the Bail Act 2002.

Factor No. 1: Likelihood of Surrender to Custody

4. At the time of the alleged offence, the accused was 43 years old. He was married with 6 children. He is a dalo and yaqona farmer. He resided in a village in Cakaudrove. According to the prosecution, they had strong evidence against the accused. He allegedly confessed to the crime when caution interviewed by police on 24 October 2013. If found guilty after trial, the accused faced a possible sentence of 10 years imprisonment and up. Furthermore, he was on the run from the High Court from 13 March 2014 to 12 September 2014, when he was arrested on a bench warrant. Under this head, the accused's chances of bail are slim.

Factor No. 2: The Interest of the Accused

5. The accused will be tried from 23 to 27 November 2015, that is, approximately 3 months away. He had been remanded in custody since 12 September 2014, that is, approximately 11 months ago. However, time spent in remand will be deducted from his final sentence, if he's found guilty. He has not complain about the condition of his custody, and his counsel can visit him in custody to prepare his defence, as and when he pleases. There is no need for him to be at liberty for other lawful reasons. He is not under 18 years old, and is not incapacitated. Under this head, the accused's chances of bail are slim.

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

6. The complainant was about half your age. He was out collecting coconuts in the bushes near the village. You came in and allegedly raped him by sodomising him between the coconut trees. Your alleged offence was a very serious one. In my view, you are a threat to the young men in the village, and in the public interest and for the protection of the community, you should be remanded in custody until further orders of the court. This is so, despite the fact that you are presumed innocent until proven guilty beyond reasonable doubt, in a court of law.

7. For the above reasons, there are no change in circumstances, and your application for bail is denied. You are remanded in custody until trial time.


Salesi Temo
JUDGE



Solicitor for the Applicant : **Office of the Legal Aid Commission, Labasa**
Solicitor for the Respondent : **Office of the Director of Public Prosecution, Labasa**