

IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 092 AND 146 OF 2016S

UMESH PRASAD

vs

THE STATE

Counsels : **Mr. M. Yunus for Applicant**
Ms. K. Semisi for State

Hearings : **20 May and 14 October 2016**

First Ruling : **20 June, 2016**

Second Ruling : **23 December, 2016**

Joint Written Reasons : **23 December, 2016**

WRITTEN REASONS FOR DENIAL OF BAIL

1. In Suva High Court Criminal Case No. HAC 164 of 2016S, the applicant (accused) faced 4 rape charges and 9 sexual assault charges against children under the age of 13 years. On 3 June 2016, in the presence of his counsel, the charges were put to him and he pleaded not guilty to the same.
2. On first call in the High Court on 6 May 2016, he did not appear. A bench warrant was issued against him. When he appeared on 20 May 2016, he had been remanded in custody since then. So, he had been in custody for approximately 7 months. He had made two bail applications in Miscellaneous Case Nos. HAM 092/16 and 146/16. On HAM 092/16, I denied bail on 20 June 2016 and adjourned to give my written reasons. While the same was pending, he applied for bail again in HAM 146/16 on 25 August 2016. Both parties had filed affidavit evidence in this matter.

3. On 14 October 2016, I heard the parties on HAM 146/16. Because the two applications involved the same matter, I will now give my reasons why I will deny bail on both applications. I have read the parties' papers on both applications and have heard their verbal submissions.
4. It is well settled that an accused person is entitled to bail pending trial, unless the interest of justice requires otherwise. The test for the grant of bail was whether or not the accused will turn up in court on the date arranged to take his trial. In considering the issue, the court was duty bound to consider the factors laid out in section 19 of the Bail Act 2002.

Factor No. 1: Likelihood of Accused's Surrender to Custody:

5. The accused is 30 years old. He is married, with a daughter. He resided in Kinoya. He is a Primary School Teacher by profession. According to the prosecution, they had strong evidence against the accused. According to the prosecution, the accused allegedly raped and sexually assaulted 9 children under the age of 13 years old between 1 January 2010 and 31 December 2012, at a primary school, while working there as their teacher. The prosecution said, they had strong direct evidence from the complainants. If found guilty after trial, the accused faced a possible prison sentence of 13 years and up. On the first call date in the High Court, he did not appear and a bench warrant was issued against him. Under this head, his chances of bail are slim.

Factor No. 2: The Interest of the Accused:

6. The accused will be tried from 24 to 28 April 2017, which is 4 months away. He had been remanded in custody since 20 May 2016, approximately 7 months ago. So, by trial time, he would be in custody for approximately 11 months. If he's found guilty after trial, time spent in remand will be deducted from his final sentences. He is remanded at the new Suva Remand Centre. He is represented by legal aid counsels, and they can visit him in custody to prepare his defence, as and when they please. There appears to be no valid reasons for him to be at liberty for other lawful reasons. He is not incapacitated. Under this head, his chances of bail are slim.

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

7. The allegations against the accused were very serious. Nine young students under the age of 13 years old were allegedly raped and sexually assaulted by the accused, while he was their

teacher. This was a serious allegation indeed. Although the accused was presumed innocent until proven guilty beyond reasonable doubt in a court of law, in my view, it was in the public interest and the protection of the public that he be remanded in custody, until further orders of the court.

8. It was for the above reasons that I denied him bail on 20 June 2016, and also the reasons why I am denying him bail today.



Salesi Temo
JUDGE

Solicitor for Applicant	:	Legal Aid Commission, Suva.
Solicitor for State	:	Office of the Director of Public Prosecution, Suva.