

IN THE HIGH COURT OF FIJI AT LABASA
(CRIMINAL JURISDICTION)

Criminal Miscellaneous Case No.: 007 of 2017

BETWEEN : **TERRENCE ROKOBATI**
Applicant

AND : **STATE**
Respondent

Counsel : Mr. R. Kumar for Applicant
Ms. S. Nasedra for Respondent

Date of Ruling : 31st March 2017


BAIL RULING

1. This is an application for bail pending trial. The applicant is charged with one count of rape contrary to section 207(1) of the Crimes Act 2009. The prosecution says that the complainant is 8 years old. The applicant is related to the complainant as her uncle.
2. This is a case of domestic violence. In terms of section 3(4) of the Bail Act 2002 as amended by the Domestic Violence Act 2009, the presumption in favour of bail under section 3(3) of the Bail Act is therefore displaced.

3. In his affidavit the applicant says that he is a first offender and that he is willing to relocate. The affidavit of the applicant does not indicate that he was employed before he was arrested for this matter though he claims that he is the only breadwinner in the family.
4. The Respondent does not object for the applicant to be enlarged on bail subject to the condition that he should relocate.
5. It is pertinent to note that the applicant has not disclosed in his application for bail the fact that he is charged with a domestic violence offence. An applicant applying for bail must disclose all relevant facts in the bail application. If the relationship between the applicant and the complainant is a domestic relationship, it should be disclosed in the application because the presumption in favour of granting of bail is displaced if that is the case. Such application should also contain sufficient material for the court to form an opinion in line with section 19(1)(d) of the Bail Act (as amended).
6. The applicant is charged with a serious offence where the applicable tariff is 10 to 16 years imprisonment as the victim is a child.
7. In the case of *State vs AV* (Criminal Case No 192/2008), Justice Goundar held that;
"Children below the age of 14 years are the most vulnerable victims, and therefore, the need for protection of law is greater..... By ratifying the convention, the State is obliged to take all appropriate legislative measures to protect children of this country from all forms of physical or mental violence, injury or abuse or exploitation or sexual abuse. The Convention also allows for judicial involvement to carry out the protective measures for children"

8. Considering the fact that the presumption in favour of granting of bail is displaced and the fact that the victim in this case who is 8 years old is in the category of the most vulnerable victims in the light of the aforementioned judgment, I am not inclined to grant bail to the applicant.

9. This application is therefore refused.



Vinsent S. Perera
JUDGE



Solicitor for the State : Office of the Director of Public Prosecutions, Labasa.
Solicitors for the Accused : Legal Aid Commission, Labasa.