

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**[CRIMINAL JURISDICTION]**

**MISCELLANEOUS CASE NO: HAM 121 of 2017**

**EPARAMA TEKEI**

**V**

**STATE**

**Counsel** : **Mr. N. Bulisea for the Applicant**  
**Ms. L. Bogitini for the Respondent**

**Date of Hearing** : 15 May 2017

**Date Ruling** : 19 May 2017

### **BAIL RULING**

1. This is an application for bail pending trial. The Applicant was arrested on or about 7 April 2017. As per the Information filed by the Director of Public Prosecutions ("DPP") in the substantive matter (HAC 121 of 2017), the Applicant is charged with two counts of rape contrary to Section 207 (1) and (2)(b) and (3) of the Crimes Act 2009 ("Crimes Act"). The offence of rape carries a maximum sentence of life imprisonment.

2. This application was instituted by way of a Notice of Motion for bail, which was supported by an Affidavit of the Applicant. He deposes in the said Affidavit that he is 33 years of age, not married, but living with his girlfriend, namely Francis Verma, with the intention of getting married to her.
3. The complainant in this case, Paris Verma (the victim), has been living with his girlfriend and himself. They intend to adopt this child, who is 4 (four) years of age (she is said to have been born on 13 May 2013).
4. The Applicant deposes that he is employed by Scientific Forest (Fiji) Ltd, based at Pacific Harbour, Deuba.
5. The Applicant denies all the allegations against him.
6. The Applicant has also filed a Supplementary Affidavit in support of his application for bail. Therein he sets out the strict bail conditions he is willing to be subjected to in the event of his application for bail been granted.
7. The Respondent filed the Affidavit of WDC 4081 Ilisabeta, a Police Officer attached to the Navua Police Station, in opposition to this application for bail. She was in charge of the investigations in this case and strongly objects to the granting of bail.
8. WDC Ilisabeta reiterates that the complainant in this case is a 4 year old female child. If the Applicant is released on bail there is a high likelihood that he may interfere with the prosecution witnesses, as they are known to him.
9. The complainant child is currently residing with the Applicant's partner, Francis Verma. It is alleged that the said Francis Verma has been even taking the complainant child to the Suva Remand Center whilst visiting the Applicant.
10. In terms of section 3(1) of the Bail Act 2002 ("Bail Act"), *"Every accused person has a right to be released on bail unless it is not in the interest of justice that bail should be granted."*

11. Section 3(3) of the Bail Act provides that: *"There is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption."*
12. However, in terms of Section 3(4) of the Bail Act, as amended by the Domestic Violence Act No 33 of 2009 ("Domestic Violence Act"), the presumption in favour of granting of bail is displaced in the following circumstances:
  - (a) *the person seeking bail has previously breached a bail undertaking or bail condition; or*
  - (b) *the person has been convicted and has appealed against the conviction; or*
  - (c) *the person has been charged with a domestic violence offence.*
13. The Learned Counsel for the State submitted that since the Applicant is in a de-facto relationship with the complainant's adopted mother (although the adoption has still not been formalized), the offences for which the Applicant is charged would tantamount to a domestic violence offence. As such, the presumption in favour of granting of bail is displaced.
14. The Bail Act defines a 'domestic violence offence' to mean a domestic violence offence pursuant to section 3 of the Domestic Violence Act. When perusing the Domestic Violence Act, section 3(1) broadly defines the term domestic violence. *"Domestic violence" in relation to any person means **violence** against that person ('the victim') committed, directed or undertaken by a person ('the perpetrator') with whom the victim is, or has been, in a **family or domestic relationship**. [Emphasis is mine].*
15. In terms of Section 3(2) of the Domestic Violence Act the term '**violence**' has been broadly defined to mean any of the following:
  - (a) *physical injury or threatening physical injury;*

- (b) **sexual abuse or threatening sexual abuse**; [Emphasis is mine].
- (c) *damaging or threatening to damage property of a victim;*
- (d) *threatening, intimidating or harassing;*
- (e) *persistently behaving in an abusive, cruel, inhumane, degrading, provocative or offensive manner;*
- (f) *causing the victim apprehension or fear by -*
  - (i) *following the victim; or*
  - (ii) *loitering outside a workplace or other place frequented by the victim,*  
*or*
  - (iii) *entering or interfering with a home or place occupied by the victim, or*
  - (iv) *interfering with property of the victim, or*
  - (v) *keeping the victim under surveillance;*
- (g) *causing or allowing a child to see or hear any of the violence referred to in paragraphs (a) to (f) inclusive;*
- (h) *causing another person to do any of the acts referred to in paragraphs (a) to (g) inclusive towards the victim.*

16. Section 2 of the Domestic Violence Act defines "**family or domestic relationship**" to mean the relationship of -

- (a) *spouse;*
- (b) *other family member;*
- (c) *person who normally or regularly resides in the household or residential facility;*
- (d) *boyfriend or girlfriend;*

(e) *person who is wholly or partly dependent on ongoing paid or unpaid care or a person who provides such care. [Emphasis is mine].*

17. When analysing the above there is no dispute that the relationship between the complainant and the Applicant is a family or domestic relationship as defined in the Domestic Violence Act. Accordingly, this Court is satisfied that the Applicant has been charged with a domestic violence offence as defined in the Domestic Violence Act.
18. Therefore, I concur with the Learned Counsel for the State that in the circumstances of this case, the presumption in favour of granting of bail to the Applicant is displaced.
19. However, even if the presumption in favour of granting of bail to the Applicant is displaced by the fact that he is concerned with domestic violence offence, this Court is vested with the discretion to consider bail.
20. Section 19(1) of the Bail Act, as amended by the Domestic Violence Act, provides for grounds for the Court to refuse to grant bail. The sub section is reproduced below:
- "An accused person must be granted bail unless in the opinion of the police officer or the court, as the case may be-*
- (a) *the accused person is unlikely to surrender to custody and appear in court to answer the charges laid;*
  - (b) *the interests of the accused person will not be served through the granting of bail;*
  - (c) *granting bail to the accused person would endanger the public interest or make the protection of the community more difficult; or*
  - (d) *the accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted."*

21. In forming the opinion required by subsection (1), section 19(2) of the Bail Act stipulates that Court must have regard to all the relevant circumstances, and in particular to the circumstances enumerated in the said sub section. In relation to section 19(1)(d), the relevant circumstances can be found in section 19(2)(d), which reads as follows:

*"(d) as regards the safety of a specially affected person when the accused is charged with a domestic violence offence –*

*(i) the nature and history of alleged domestic violence by the accused in respect of the person against whom the alleged offence has been committed and any other specially affected person;*

*(ii) the views of the person against whom the alleged offence has been committed and any other specially affected person about the risk, if any, that the accused may pose to the safety and wellbeing of a specially affected person while on bail;*

*(iii) whether a domestic violence restraining order is in effect for the protection of a relevant specially affected person;*

*(iv) the likelihood of the accused person committing a further domestic violence offence while on bail."*


22. The primary objection by the Respondent is that there is a high likelihood that the Applicant may interfere with the prosecution witnesses, including the complainant, who in this case is a 4 year old female child.

23. In his Affidavits, filed in support of the application, the Applicant states that he would reside with his mother, at their family residence at Nasinu, in the event of him

being enlarged on bail. Although not specifically deposed in the Affidavits, the Counsel for the Applicant submitted that his client would not travel to Pacific Harbour (where the complainant resides), even for his employment. Further, until this matter is concluded the Applicant is willing to stay away from his partner, Francis Verma.

24. However, this Court cannot ignore the fact that the complainant is merely 4 years of age and as such is extremely vulnerable. If the Applicant is enlarged on bail the safety and wellbeing of this minor child is most likely to be put at risk.
25. As stated by WDC 4081 Ilisabeta in her Affidavit in opposition, by committing the alleged offence of rape, the Applicant has breached the trust of a vulnerable individual, to whom the Applicant was a father figure.
26. In terms of section 17(2) 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 charges laid against him. The Counsel for the State further objected to bail on the ground that the accused person is unlikely to surrender to custody and appear in court to answer the charges laid. The basis for this objection was due to the circumstances, nature and seriousness of the offence; the strength of the prosecution case and the severity of the likely penalty if the Applicant is found guilty.
27. Taking into consideration all the above, I refuse this application for bail pending trial and the application for bail is accordingly dismissed.



  
**Riyaz Hamza**  
**JUDGE**  
**HIGH COURT OF FIJI**

AT SUVA

Dated this 19<sup>th</sup> Day of May 2017

**Solicitor for the Applicant** : **Nawaikula Esq, Barristers & Solicitors, Suva.**  
**Solicitor for the Respondent** : **Office of the Director of Public Prosecutions, Suva.**