

IN THE HIGH COURT OF FIJI
AT LABASA
[MISCELLANEOUS JURISDICTION]

CRIMINAL MISCELLANEOUS CASE NO. HAM40 OF 2017

(Criminal Case No. HAC 75 of 2017)

BETWEEN: MATAITOGA ROGOIVOSA

APPLICANT

AND: THE STATE

RESPONDENT

Counsel: Mr N Tuifagalele for the Applicant
 Mr R Kumar for the Respondent

Date of Hearing: 15 January 2018

Date of Judgment: 19 January 2018

RULING

- [1] This is an application for bail pending trial.
- [2] The applicant is charged with one count of sexual assault and one count of rape. Both charges involve the same victim. She is a 6year old girl. The alleged incident occurred at Yacata Island in the Northern Division on 1st November 2017.
- [3] The prosecution case is that the applicant allegedly assaulted the child victim by licking her vagina and also digitally raped her by inserting his finger into her vagina. Under caution, the applicant admitted the alleged incidents. The prosecution

opposes the granting of bail saying the risk of interference with the victim is real if the applicant is released on bail.

- [4] The principles applicable to the granting of bail are set out in the Bail Act 2002. Section 3(1) states that the accused has a right to be released on bail unless it is not in the interest of justice that bail should be granted.
- [5] The presumption in favour of the granting of bail is displaced by virtue of Section 3(4) (c) where the accused is charged with a domestic violence offence.
- [6] The applicant is the victim's maternal grand uncle. That relationship with the victim makes the offence alleged a domestic violence offence. The applicant by virtue of his age (54 years) and relationship commands authority over the victim and her family. His proposed surety is his younger brother and nephew, who command no authority over him. The risk that the applicant will interfere with the witnesses for the prosecution is real.
- [7] The prosecution evidence against the applicant is strong. Custodial sentence is inevitable if he is convicted of the charges. These factors provides strong incentive for the applicant not to turn up for his trial if he is released on bail.
- [8] Overall, it is not in the interest of justice to release the applicant on bail. The application is refused.



A handwritten signature in blue ink, appearing to read 'Daniel Goundar'.

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Hon. Mr Justice Daniel Goundar

Solicitors:

M/S Tuifagalele Legal for the Applicant
Office of the Director of Public Prosecutions for the Respondent