

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

Criminal Miscellaneous Case No. HAM 293 of 2018

[High Court Criminal Case No. HAC 081 of 2018]

BETWEEN : MANASA RATULOALOA

AND : STATE

Counsel : MS L. Ratidara for the Applicant
Mr I. Rakariya for the State

Date of Hearing : 06 December 2018

Date of Ruling : 14 December 2018

RULING

1. The Applicant filed a notice of motion through the Legal Aid Commission on 18 October 2018 seeking bail pending trial. He is charged with one count of rape contrary to section 207(1)(2)(b) and (3) of the Crimes Act, one count of sexual assault contrary to section 210(1)(b)(i) and (2) of the Crimes Act and another count of abduction of young persons contrary to section 285 of the Crimes Act.
2. The Applicant claims that he has been in custody since 25 January 2018. However, it appears that during this period he has served a sentence of 9 months imprisonment imposed on him in Nausori Magistrate's court case no 81 of 2018.

3. The Prosecution case is that when the victim was on her way to school the Applicant had allegedly lured the victim to get into his car to drop her at school. The victim is allegedly punched on her cheek and on her thighs and the Applicant had allegedly inserted his finger into her vagina. The victim is 12 years old and the alleged incident occurred on 25 January 2018 at around 7.30 am.
4. I have considered the affidavit tendered by the Applicant along with the notice of motion. He has stated the following:
 - a. He is 27 years old
 - b. He has been in remand custody since 25 January 2018
 - c. He served a sentence of 6 months and after serving the sentence he was sent back to remand prison
 - d. He is an army officer (TF) and prior to being remanded he was an air craft searcher for Airports Fiji Limited
 - e. He has no record of absconding bail
5. It does not appear that the Applicant has a history of breaching bail conditions or absconding. Although the Applicant has stated that he was sentenced to 6 months imprisonment, as per the copy of the sentence tendered by the State the Applicant had been imposed with a 9 months imprisonment. Further he deposed in his affidavit that he is an army officer and prior to being remanded he was an air craft searcher for Airports Fiji Limited. But it appears that he had informed the Nausori Magistrate's court that he was a security officer as per the sentence copy tendered by the State. Therefore, some of the facts deposed in the affidavit seems to be incorrect. Nevertheless, I have considered the bail application.
6. Section 3(1) of the Bail Act provides that every person has a right to be released on bail unless it is not in the interest of justice that bail should not be granted. Further Section 3(3) of the Bail Act states that there is a presumption in favour of the granting of bail to a person.

7. However, the presumption is rebuttable and the Bail Act provides for instances where the presumption is displaced as per Section 3(4) in any of the following circumstances;
- a) The person seeking bail has previously breached a bail undertaking or bail condition;
 - b) The person has been convicted and has appealed against the conviction;
or
 - c) The person has been charged with a domestic violence offence.
8. In considering bail the court must also take into account the time that the accused person may have to spend in custody before trial if bail is not granted. Section 17(2) of the Act provides that the primary consideration in deciding whether to grant bail is likelihood of the accused person appearing in court to answer the charges laid against him or her.
9. Section 19 of the Bail Act states that an accused person must be granted bail unless the court is of the opinion that;
- 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 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.
10. According to His Lordship Justice Goundar in **Isimeli Wakaniyasi v The State** (2010) FJHC 20; HAM 120/2009 (29th January 2010) existence of any one ground is sufficient to refuse bail. In light of the above discussed provisions in the Bail Act I will now consider the material placed before this court in relation to the bail application made on behalf of the Accused.

11. The State submits that they have a strong case against the Applicant. There is no contention that the Accused is innocent until proven guilty. The charge against the Accused is still an allegation and the Prosecution is yet to produce evidence against the Accused. However, for the purposes of bail the court must look into the other aspects enunciated in the Bail Act to consider bail. As it was earlier stated the primary consideration would be to determine the likelihood of the Accused appearing in court to answer the charge laid against him.
12. Further it appears that the Applicant is convicted by the Nausori Magistrate's Court for offences which were committed on the same day after the alleged incident in the present case. I have reasons to believe that the Applicant may re-offend if he is granted bail.
13. Apparently, this case would attract potentially a long term custodial sentence if the Applicant is convicted. I am satisfied that there is a possibility that the Applicant would be tempted to abscond bail given the serious consequences on conviction.
14. I am mindful of the fact that the court has to consider the time that he will be spending in custody pending trial. This is a case which would receive priority over the other matters due to the nature of the offence and the age of the victim. Given the manner in which the current trial listings are managed in the High Court of Suva, the chances are high that this case will be fixed for hearing within the first half of next year. Therefore, I do not have any reason to believe that the Applicant will have to spend a prolonged period in custody pending trial.
15. In the circumstances I am satisfied that it is not in the interest of justice to grant bail in this matter. Bail is refused.



A handwritten signature in black ink, consisting of several overlapping loops and lines.

Rangajeeva Wimalasena
Acting Judge