

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

CRIMINAL MISCELLANEOUS CASE NO. HAM04 OF 2018

(Criminal Case No. HAC 61 of 2017)

BETWEEN: **ABDUL RASHID**

APPLICANT

AND: **THE STATE**

RESPONDENT

Counsel: **Mr V Tuicolo for the Applicant**
 Ms D Kumar for the Respondent

Date of Hearing: **22 February 2018**

Date of Ruling: **02 March 2018**

RULING

- [1] This is an application for bail pending trial. The principles governing this application are in the Bail Act 2002. Section 3 states that there is a right to bail unless it is not in the interests of justice that bail should be granted. Further, there is a presumption in favour of granting of bail, but that presumption is displaced by section 3 (c) if the accused has been charged with a domestic violence offence.
- [2] The applicant is charged with one count of breaching a domestic violence restraining order and one count of rape. The complainant is his wife. Together they have a 7 year old daughter. The charges arose at their residence in Labasa. The rape charge

arose while there was a domestic violence restraining order against the applicant. After the alleged incident of rape, the complainant re-allocated to live with her parents in Savusavu with her daughter. It is not in dispute that the applicant is charged with domestic violence offences and therefore the presumption in favour of the granting of bail has been displaced.

- [3] The applicant has been in custody on remand since 2 October 2017. He is 30 years old and was employed as a labourer by a construction company before he was remanded in custody. His mother is financially depended on him. He proposed his mother and his cousin brother to stand as his sureties. Since the applicant's mother is depended on him for support, I do not think she will have any control over him in terms of complying with the bail conditions.
- [4] The application for bail is opposed by the State. The State relies upon the affidavit sworn and filed by the investigating officer, WPC Komal.
- [5] WPC Komal has spoken to the complainant. According to the complainant, the applicant had threatened to kill her and their daughter and commit suicide. There is a history of alleged domestic violence. Currently, there is a domestic violence charge pending against the applicant in the Magistrates' Court. The applicant's statement in his affidavit that there are no other pending cases against him before the courts is not true.
- [6] The prosecution case is depended upon the complainant's evidence. There is medical evidence to support the complainant's evidence. The charge of rape is serious. The offence is punishable by life imprisonment. If convicted, a custodial sentence is inevitable. These factors provide strong incentive for the applicant not to turn up for the trial.
- [7] Given the history of the alleged violence towards the complainant by the applicant, the likelihood of interference with the witness is very high. The complainant's fear of further victimization by the applicant is genuine.

[8] In these circumstances, it is not in the interests of justice to release the applicant on bail. Since the applicant is refused bail, the case will be given a priority hearing date before July 2018.



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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Legal Aid Commission for the Applicant
Office of the Director of Public Prosecutions for the Respondent