

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

Criminal Miscellaneous Case No. HAM 246 of 2018
[High Court Criminal Case No. HAC 312 of 2018]

BETWEEN : ANIL CHAND

AND : STATE

Counsel : Mr T Sharma for the Accused
Ms L Bogitini for the State

Date of Hearing : 12 & 20 September 2018
Date of Ruling : 21 September 2018

RULING

- [1] The Accused seeks bail pending trial. He is charged with one count each of attempted murder and assault causing actual bodily harm. The complainants are two sisters. One of them was in a relationship with the Accused. The prosecution case is that when the complainant tried to break-up her relationship with the Accused he stabbed her several times with a knife. When the second complainant came to her sister's rescue, the Accused stabbed her as well.
- [2] The alleged incidents occurred on 25 July 2018 at the complainants' place of residence. Following the alleged incident, the first complainant was hospitalised. She sustained serious injuries to her body. The Court has been informed that the complainants have now moved out of the house where the alleged incidents occurred.

- [3] On 30 July 2018, the Accused was interviewed under caution. He admitted stabbing the complainant in self-defence. The prosecution case is that the injury found on the Accused was self-inflicted to make it look like he was acting in self-defence. The alleged incidents were witnessed by the neighbours of the complainants who came to their rescue. The prosecution case is that the Accused had admitted to one of the witnesses that the injury on him was self-inflicted.
- [4] One of the proposed sureties of the Accused is his younger brother. The prosecution relies upon the affidavit of DC Apakuki to submit that the brother of the Accused has attempted to interfere with the first complainant while she was admitted at the hospital. The brother has filed an affidavit denying the allegation of interference with the complainant.
- [5] The Accused is 33 years old. He is a single father. He resides with his extended family and financially supports them. He works as a labourer.
- [6] The Bail Act 2002 (the Act) codifies much of the law relating to bail. Part II of the Act contains provisions of general application. The Act provides for two presumptions. An accused has an entitlement to bail (s 3(1)). This does no more than reflect the principle of the presumption of innocence, which is also stated in the Constitution. The entitlement will fail if it is not in the interests of justice that bail should be granted. Secondly, there is a presumption in favour of the granting of bail (s 3(3)). However, that presumption is rebuttable if it can be shown that the accused has previously breached a bail undertaking or bail condition, or been convicted and has appealed against the conviction, or has been charged with a domestic violence offence (s 3(4)).
- [7] Section 17(2) of the Act states that the primary consideration in determining whether to grant bail is the likelihood of the accused appearing in court to answer the charge laid against him or her. The Court must also take into account the time the accused may have to spend in custody before trial if bail is not granted. The current practice of this Court is to hear the trial of an accused person who has been refused bail within 12

months from the date of arraignment. So if bail is not granted to the Accused the time in custody while in remand will be about 12 months.

- [8] Although the primary consideration in determining whether to grant bail is the likelihood of the accused person appearing in court to answer the charge (s 17(2), the court may refuse bail if the interests of the accused person will not be served through the granting of bail or the granting of bail would endanger the public interest or make the protection of the community more difficult (19(1)).
- [9] Attempt to murder is a very serious offence. The offence is punishable by life imprisonment, like the offence of murder. The prosecution case against the Accused is strong. The presumption in favour of the granting of bail is displaced due to the fact that the first complainant was in a de-facto relationship with the Accused. The likelihood of the Accused interfering with the witnesses is high. The likelihood of him not appearing for his trial is also high. I am satisfied that it is not in the interests of justice to grant bail.
- [10] Bail is refused. The Accused will remain in custody on remand pending trial. A priority trial date will be assigned to this case.



A handwritten signature in blue ink, appearing to be "DG", with a long horizontal line extending to the right.

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Hon. Mr Justice Daniel Goundar

Solicitors:

Tirath Sharma Lawyers for the Accused
Office of the Director of Public Prosecutions for the State