

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

MISCELLANEOUS CASE No. HAM 248 of 2018
[High Court Criminal Case No. 259, 260 of 2018]

BETWEEN : RATU SELA DRADRA MATIA

AND : STATE

Counsel : Ms L Ratidara for the Accused
Ms S Shameem for the State

Date of Hearing : 14 September 2018

Date of Ruling : 21 September 2018

RULING

- [1] The Accused seeks bail pending trial. He is charged with numerous sexual offences against two complainants.
- [2] In Criminal Case Number 259 of 2018, the Accused is charged with two counts of sexual assault and two counts of rape. The complainant is a child under the age of 13 years. The alleged incidents occurred between January 2017 and June 2018 on the island of Kadavu. The complainant is a relative of the Accused.
- [3] In Criminal Case Number 260 of 2018, the Accused is charged with two counts of rape. The complainant is the Accused's elderly mother. The alleged incidents occurred between January 2016 and July 2017 on the island of Kadavu.
- [4] The State objects to bail saying that the Accused allegedly committed family violence and therefore the presumption in favour of the granting of bail is displaced.

- [5] The State further submits that the prosecution evidence against the Accused is strong and that the likelihood of interference with the complainants is high.
- [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] The application for bail was made in person by the Accused. He has provided very little information about his personal background. He seeks bail to look after his elderly mother and young nephews. He has not proposed names of any sureties. It seems his community ties are not strong.

- [10] In his caution statement, the Accused said he is 45 years old and a farmer by profession. He has made full admissions in respect to the allegations against him.
- [11] Both complainants have given police statements describing in detail the sexual offences that the Accused allegedly committed on them. There is also some medical evidence to support the allegations of sexual abuse on the complainants.
- [12] In respect of the allegation involving the Accused's mother, the last alleged incident was witnessed by two adult relatives of the Accused. They confronted the Accused and he admitted the allegation to them.
- [13] The prosecution evidence against the Accused is very strong, if not overwhelming. The witnesses are family members.
- [14] Rape is a serious offence. Rape is more serious when the alleged victims are vulnerable and family members of the Accused. The presumption in favour of the granting of bail is displaced due to the fact that the complainant is the mother of the Accused. If the Accused is convicted, he is potentially looking at a long prison sentence. The likelihood of the Accused interfering with the witnesses is high. The likelihood of him not appearing for his trial is also high. Taking all these matters into account, I am satisfied that it is not in the interests of justice to grant bail.
- [15] 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 "Daniel Goundar".

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Hon. Mr Justice Daniel Goundar

Solicitors:

Office of Legal Aid Commission for the Accused

Office of the Director of Public Prosecutions for the State