

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 32 OF 2019

BETWEEN : **LAISENIA MIKAELE**
Applicant

AND : **STATE**
Respondent

Counsel : **Mr. T. Kean for Applicant**
Ms. S. Shameem for Respondent

Date of Ruling : **11th March, 2019**

BAIL RULING

1. This application has been filed on behalf of the Applicant seeking bail pending trial.
2. The Applicant is charged with one count of Rape, contrary to Section 207 of the Crimes Act. There is no trial date fixed so far for his substantive matter. The Applicant has been in remand since 11th December, 2018.

3. The Applicant is the paternal uncle of the complainant and therefore he is in a domestic relationship under the Domestic Violence Act where the presumption in favour of granting bail is displaced.
4. The State is objecting to the application on the ground that the Applicant is likely to interfere with the complainant who is the main witness for prosecution.
5. The State is also objecting to the proposed two sureties on the basis that both of them are females and therefore not in a position of authority or power to ensure that the Applicant will abide by bail conditions imposed by court. The State is also concerned that if the Applicant is allowed to go back to his home in Koro, he will interfere with the complainant who is also residing in the same village.
6. The State confirms that the Applicant has no previous convictions or pending cases. There is no evidence that he has violated previous bail conditions. He is willing to introduce a male surety and relocate himself at his sister's place in Navua, a village far away from complainant's place of residence. He is willing to give an undertaking to court that he will not interfere directly or indirectly with the witnesses for prosecution.
7. There is no reason why stringent bail conditions would not be sufficient to guard against potential risk of witness interferences. I am of the view that the concerns raised by the Respondent can be addressed by imposing stringent bail conditions to ensure that the complainant is not interfered with and the Applicant abide by bail conditions imposed by the court.
8. For the reasons given, I allow the application for bail on following bail conditions; the Applicant-
 - i. to provide personal bail bond for 500 FJD
 - ii. to provide surety bail bond for 1000 FJD with two sureties acceptable to court.

- iii. not to interfere with the complainant and other witnesses for prosecution.
- iv. to reside at the Navua address given to court.
- vi. to report to the Navua Police Station on the last Saturday of the month between 8am and 4 pm.

9. I issue an Interim Domestic Violence Restraining Order against the Applicant with non molestation and non-contact orders.

10. The Application for bail is allowed.



A handwritten signature in black ink, appearing to read "Aruna Aluthge".

Aruna Aluthge

Judge

At Lautoka

11th March, 2019

Solicitors: Legal Aid Commission for Applicant

Office of the Director of Public Prosecution for the Respondent