

IN THE HIGH COURT OF FIJI AT SUVA

In the matter of an application for bail
pending trial.

ATESHWAR PRASAD

Applicant

**CASE NO: HAM. 311 of 2018
[HAC 311/2018]**

Vs.

STATE

Respondent

Counsel : Mr. J. Reddy & Mr. J. Vulakouvaki for Applicant
Ms. K. Semisi for Respondent

Hearing on : 29 January 2019

Ruling on : 12 February 2019

RULING

1. This is the second application for bail pending trial. The applicant is charged with one count each of rape, sexual assault, abduction and unlawful confinement. The prosecutrix is a 12-year old child and her 16-year old sister was allegedly in a relationship with the applicant at the material time.
2. The ruling on the first application [*Prasad v State* [2018] FJHC 820; HAM227.2018]

was made by Goundar J on 05 September 2018. This (second) application was filed on 30 October 2018.

3. According to the affidavit filed in support of this application the main change of circumstances relied upon by the applicant in this application is his proposal to reside at a place different to what was proposed in his previous application. In addition, the applicant has also replaced one of the proposed sureties.
4. The respondent objects to this application stating that this application does not disclose any change of circumstances since the initial application.
5. I have carefully perused the ruling delivered on the first bail application. It is manifestly clear that the Learned Judge had not considered the applicant's proposed place of residence or the proposed sureties in deciding to refuse bail.
6. As reflected in the said ruling, in refusing bail on 05 September 2018 this court had formed the view that the applicant is a flight risk given the strength of the prosecution case and the penalty for the offence of rape.
7. In the case of *Aitcheson v State* [2018] FJSC 29; CAV0012.2018 decided on 02 November 2018, the Supreme Court reviewed the sentencing tariff for the offence of rape of a child where the said tariff was enhanced. Accordingly, the present tariff for the rape of a child victim is 11 years to 20 years. This change of the applicable sentencing tariff further enhances the flight risk in this case. Moreover, this court had also formed the view that there is a high likelihood of the applicant interfering with the prosecution witnesses given the facts of the case.
8. The applicant's change of mind in respect of the place of residence and/or the sureties cannot be regarded as a change of circumstances that would necessitate the reviewing of the decision already taken with regard to bail, especially where the relevant initial proposals were not taken into account in refusing bail. Nevertheless, those changes proposed in respect of the place of residence and the sureties do not

affect the aforementioned views this court had already formed.

9. In the circumstances, I have decided to refuse this application.

10. This application is accordingly refused.



A handwritten signature in black ink, appearing to read "Vincent S. Perera".

Vinsent S. Perera

JUDGE

Solicitors:

Jiten Reddy Lawyers, Nakasi for the Applicant
Office of the Director of Public Prosecutions for the State