

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**MISCELLANEOUS JURISDICTION**

**CRIMINAL MISCELLANEOUS CASE NO: HAM 259 OF 2019**

**BETWEEN**

**JOSEVA RAKAI**

**APPLICANT**

**AND**

**STATE**

**RASPENDENT**

**Counsel: Applicant in Person**

**Mr. E. Samisoni for Respondent**

**Date of Ruling: 19 September 2019**

**BAIL RULING**

1. The Applicant has filed this application seeking bail pending trial.

2. In the substantive matter, the Applicant with two others is charged with two counts of Aggravated Robbery, one count of Act with Intent to Cause Grievous Harm and one count of Damaging Property contrary to Sections 311(1)(a), 225 (a) and 369(1) respectively of the Crimes Act 2009.
3. This is the 2<sup>nd</sup> bail application of the Applicant.
4. The Applicant's previous bail application has been dismissed by a Ruling dated 4 October 2018.
5. The Applicant has filed this renewed application on the ground that he was assaulted by the prison officers at the Remand Centre. The other grounds advanced by the Applicant have already been considered by this court in the first bail application.
6. The Respondent has filed an affidavit in reply seeking a dismissal of the application on the basis that there is no substance in the claim that the Applicant was assaulted at the Remand Centre.
7. According to the affidavit filed by the State, there is a strong case against the Applicant in that the Applicant has allegedly made admissions in his caution interview. There are three cases of similar nature pending against the Applicant in the High Court. In all pending matters the Applicant is remanded in custody. The State is concerned that the protection of the community would be in jeopardy if the Applicant is released to the community.
8. As regards the assault allegation, the State contends that there is no medical evidence that the Applicant was assaulted in the Remand Centre and that he was injured. There is no

evidence that the Applicant has made a complaint to that effect to the Commissioner of Fiji Corrections Services, the police or the visiting judicial officer. However the Applicant when he appeared in court took his shirt off and showed some scars in his body to substantiate his claim that he was assaulted.

9. The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer his charge laid against him. The refusal of the previous bail application was substantially on the basis that the Applicant is charged in three other cases of similar nature. The charges against the Applicant in all cases are serious and concern the protection of the community. In view of the pending cases, it is highly likely that the Applicant will not appear in court to face his trial if he is released on bail.
  
10. The question is whether the Applicant is entitled to be released on bail if the court believes the allegation of assault by prison officers to be true. Section 19 (1) (b) of the Bail Act requires the court to take into account the interests of the accused in determining bail. To form an opinion as regards the interests of the accused person, the courts under Section 19 (2) (b) of the Bail Act must have regard to all the relevant circumstances and in particular:
  - (i) the length of time the person is likely to have to remain in custody before the case is heard;
  - (ii) the conditions of that custody;
  - (iii) the need for the person to obtain legal advice and to prepare a defence;
  - (iv) the need for the person to beat liberty for other lawful purposes (such as employment, education, care of dependents);
  - (v) whether the person is under the age of 18 years (in which case section 3(5) applies);

(vi) whether the person is incapacitated by injury or intoxication or otherwise in danger or in need of physical protection;

11. The Applicant's grievance mainly concern the provision (vi) above. The court is often inundated with complaints about assaults in remand centres. In this case, there is of course no medical evidence that the Applicant is incapacitated by injuries. However in view of the apparent scars in Applicant's body alleged to have been received as a result of assaults, the court cannot simply reject the allegation and ignore the fact that the Applicant is in need of physical protection in the remand centre.


12. Two of the Applicant's cases are listed before me and one of them is already fixed for *voir dire* hearing on the 30<sup>th</sup> of this month. The strength of the prosecution's case which is based substantially on the caution interview can be tested at the *voir dire* hearing. Therefore it is not prudent to grant bail to the Applicant at this stage. This is not to belittle the interests of the Applicant who fears for his safety but to give effect to the primary consideration in determining bail which should be given preference above all other considerations.

13. Following Orders are made:

(i). Application for bail is dismissed.

(ii). The Commissioner of Fiji Corrections Services is ordered to inquire into the allegation and take all necessary measures to ensure the protection of the Applicant.



  
Aruna Aluthge  
Judge

**At Suva**

**19 September 2019**

**Solicitors: Applicant in Person**

**Office of the Director of Public Prosecution for Respondent**

**IN THE HIGH COURT OF FIJI**

**AT SUVA**

**MISCELLANEOUS JURISDICTION**

**CRIMINAL MISCELLANEOUS CASE NO: HAM 188 OF 2019**

**BETWEEN**

**ROMULUSE SENILEBA**

**APPLICANT**

**AND**

**STATE**

**RASPONDENT**

Counsel: Applicant in Person

Mr. E. Samisoni for Respondent

Date of Ruling: 22 August 2019

## BAIL RULING

1. The Applicant has filed this application seeking bail pending trial.
2. In the substantive matter, the Applicant is charged with Attempted Murder contrary to Sections 44 and 237 of the Crimes Act 2009.
3. This is the 2<sup>nd</sup> bail application of the Applicant.
4. The Applicant's previous bail application was dismissed by a Ruling dated 6 March 2019.
5. The Applicant has filed this application on following grounds that:
  - a. He needs to go back home to look after his children
  - b. He is suffering from heart problems for which he had not seen a doctor for 2 months.
6. The Respondent has filed an affidavit in reply and seeks a dismissal of the application on the basis that there is no change in circumstances from the previous bail determination.
7. The grounds advanced have already been considered by this court. There is no evidence that the interests of Applicant's children are at a risk in the absence of the Applicant. No medical evidence has been presented to show that the Applicant is a heart patient that cannot be treated while being in the remand centre.
8. The complainant in the substantive matter is the wife of the Applicant. The Applicant is alleged in an offence of domestic violence in which the presumption in favour of bail is

displaced. Furthermore, the present charge has been filed while the Applicant was on bail in another matter of similar nature wherein the complainant's wife and the daughter are the witnesses.

9. The refusal of the previous bail application was substantially on the basis that the Applicant by virtue of the relationship with complainant is likely to interfere with the witness for Prosecution.
10. The test for a renewed application for bail is that whether there is a change in circumstances from the last decision on bail or are there circumstances which, although they then existed, were not brought to the attention of the court (State v Takiveikata [2008] FJHC 31; HAM 107.2007 (4 March 2008), Nottingham Justices, ex parte Davies [1981] QB 38).
11. In the present application, the Applicant has not shown that he has fresh grounds for bail that were not considered by this court.
12. The Applicant has failed to satisfy this court that he has new grounds for bail that were not considered by a court of law.

**13. Order**

Application for bail is dismissed.

Aruna Aluthge

Judge



At Suva

22 August 2019

Solicitors: Applicant in Person

Office of the Director of Public Prosecution for Respondent