

**IN THE HIGH COURT OF FIJI AT SUVA**

In the matter of an application for bail  
pending trial.

**ELIKI RAOMA**

**Applicant**

**CASE NO: HAM. 48 of 2020**  
**[HAC 77/2020]**

**Vs.**

**STATE**

**Respondent**

**Counsel** : Ms. S. Prakash for the Applicant  
Mr. S. Komaibaba for the Respondent

**Hearing on** : 30 June 2020

**Ruling on** : 14 July 2020

**BAIL RULING**

1. This is the first application for bail pending trial.
2. The applicant is charged with two counts of rape, one count of sexual assault and one count of indecent assault. The prosecutrix is a 5 year old child.
3. Rape is an offence punishable with life imprisonment.

4. The respondent is objecting to bail stating that inter alia;
  - a) There is a domestic relationship between the prosecutrix and the applicant where the applicant is her paternal uncle and therefore, the presumption in favour of bail is displaced;
  - b) The charges against the applicant are very serious;
  - c) The prosecutrix is 5 years old;
  - d) There is a dispute between the applicant and the family of the prosecutrix;
  - e) There is high likelihood of interference of prosecution witnesses who are related to the applicant; and
  - f) It is not in the public interest or in the interest of justice to have the applicant release on bail.
  
5. Given that the applicant is alleged to have committed domestic violence offences, in terms of section 3(4)(c) of the Bail Act 2002 as amended by the Domestic Violence Act (“Bail Act”), the presumption in favour of bail provided under section 3(3) of the Bail Act is displaced in this case.
  
6. Section 3 of the Bail Act reads thus;

*3.- (1) Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted.*

*(2) Bail may be granted by a court or, subject to section 8(2), by a police officer.*

*(3) There is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption.*

*(4) The presumption in favour of the granting of bail is displaced where-*

*(a) the person seeking bail has previously breached a bail undertaking or bail condition;*

*(b) the person has been convicted and has appealed against the conviction;*  
*or*

*(c) the person has been charged with a domestic violence offence.*

7. Sections 19(1)(d) and 19(2)(d) of the Bail Act provides thus;

- Section 19(1)(d);

*"19(1) An accused person must be granted bail unless in the opinion of the police officer or the court, as the case may be-*

*(a) ...*

*(b) ...*

*(c) ...*

*(d) the accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted."*

- Section 19(2)(d);

*"(d) as regards the safety of a specially affected person when the accused is charged with a domestic violence offence -*

*(i) the nature and history of alleged domestic violence by the accused in respect of the person against whom the alleged offence has been committed and any other specially affected person;*

*(ii) the views of the person against whom the alleged offence has been committed and any other specially affected person about the risk, if any, that the accused may pose to the safety and wellbeing of a specially affected person while on bail;*

*(iii) whether a domestic violence restraining order is in effect for the protection of a relevant specially affected person;*

*(iv) the likelihood of the accused person committing a further domestic violence offence while on bail."*


8. The applicant is 18 years old. It is submitted on behalf of the applicant that he has enrolled for a three year course at the Nausori Technical College and that he will be residing far away from the prosecutrix, her family and the state witnesses if he is granted bail.

9. Though the applicant in this case is alleged to have committed domestic violence offences, given that the relationship between the prosecutrix and the applicant is that the applicant and the father of the prosecutrix are cousin brothers and the fact that the applicant is only 18 years old, I am of the view that releasing the applicant on bail would not pose a significant threat to the safety of the prosecutrix.
10. Safety of the prosecutrix could be ensured by imposing strict bail conditions.
11. I have given my mind to the averments in paragraph 15 of the affidavit filed on behalf of the respondent opposing bail, to the effect that there is a dispute between the applicant and the prosecutrix's family unit. It is not clear whether this dispute started before the alleged incident or after.
12. If the alleged incident had given rise to a family dispute, the said fact would have been a relevant factor to form an opinion on whether it is in the public interest to grant bail and whether the granting of bail to the applicant would make the protecting of the community more difficult. However, given the ambiguity in the averments in the aforementioned paragraph 15, there is no basis to form such opinion relevant to this application.
13. In the circumstances, I would grant the applicant bail subject to the following conditions;  
The applicant should;
  - a) sign a personal surety bond of \$500;
  - b) appear in case No. HAC 77 of 2020 on every court date;
  - c) not commit any offence whilst on bail;
  - d) reside at a an address other than the residential address of the prosecutrix;
  - e) provide clear details of his residential address and reside at that address until the conclusion of the case, HAC 77 of 2020;

- f) not change the aforementioned address provided to court without the leave of the court;
- g) not assault, threaten or harass the prosecutrix;
- h) not interfere with prosecution witnesses either directly or indirectly;
- i) not leave Viti Levu until the conclusion of the case HAC 77 of 2020;
- j) report to Nausori Police Station on every other Monday between 6.00am and 6.00pm, commencing from 20/07/2020;
- k) remain at home curfewed daily between the hours of 7.30pm to 5.30am;
- l) not enter or remain on any land or building occupied by the prosecutrix;
- m) follow the relevant vocational training course during the period the applicant is on bail, diligently; and
- n) provide two suitable sureties and each surety to sign a bond of \$500 to ensure that the Applicant complies with his bail undertaking.

14. The applicant is hereby warned that the trial in HAC 77 of 2020 may take place in his absence if he fails to appear in court for the said case as directed.



  
Vincent S. Perera  
JUDGE

**Solicitors;**

Legal Aid Commission for the Applicant  
Office of the Director of Public Prosecutions for the State