

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO. HAM 97 OF 2022

STATE

.vs.

VILIAME VUNISINA

Counsels: *Mr. Singh J* - *for Prosecution*
 Mr. Waqanivalagi A - *for Accused*

Date of Ruling: 14th June 2022

BAIL RULING

1. The Applicant in this matter is charged with two (02) counts of Rape, contrary to **Section 207 (1) and 2 (a)** of the **Crimes Act of 2009** and has filed this bail application seeking bail. This is the applicant's first bail application for this matter, since he was arrested and remanded on 24/03/2022. In support of this bail application, the Applicant has filed a further Affidavit, dated 12th May 2022.
2. The State has filed its response to this bail application, objecting to bail, supported by the affidavit dated 18th May 2022 of **CPL 3265 VIKAILI**. Further, in support of the prosecution stance, the prosecuting officer of the substantive matter, Mr. Joshua Vinal Singh has also filed submissions in Court.
3. **Submissions in support of bail on behalf of the Applicant;**
 - i) Applicant states that if bail is granted, the Applicant wishes to return to his family and continue to work and support his family that includes his wife and five (5) children and elderly mother. He also states that he is the sole bread winner for his family.
 - ii) It is also asserted by the Applicant that he has been advised that every person charged with an offence has a right to be released on bail, unless it is not in the interest of justice that bail should be granted. Further, it is contended that there is a presumption in favor of granting of bail in our country.
 - iii) The Applicant also tenders that the primary consideration for granting of bail is the likelihood of the Applicant appearing in Court to answer the charges against him and he affirms Court that he will appear in Court.

- iv) In the submission of the Applicant, it is mentioned that he has one pending case in the Suva Magistrate's Court for assault.
- v) Applicant affirms that he is capable of tendering two sureties, as expected by Court, for the consideration of the prosecution.
- vi) The Applicant also claims that if he is granted bail, he will be residing in Suva, where the Complainant is resident in Nandi.

4. Submissions of the State in opposition to bail;

- i) Counsel for the State submits that, though there is a presumption in favor of granting of bail under the **Bail Act of 2002**, this presumption can be rebutted under **Section 3 (4)**. In this regard, it is highlighted that the presumption in favor of bail is displaced in this matter, since there is Domestic Violence in this matter by the Complainant being the biological daughter of the Applicant.
- ii) Further, the state counsel brings to the attention of Court the provisions of **Section 18** of the **Bail Act of 2002** in relation to the presumption against bail.
- iii) In the Affidavit filed of record by CPL 3265 VIKAILI in support of the stance taken by the State, in para 5 it is stated that the Complainant was a Juvenile victim at the time of the first incident in 2016, where the Complainant had been 16 years old.
- iv) It is confirmed in the Affidavit of CPL 3265 VIKAILI that the Applicant has 02 previous convictions, where one conviction was for disorderly conduct at a police station in 2009.
- v) Further, in paragraph 32 of the Affidavit, CPL 3265 VIKAILI informs this Court that the Applicant has attempted to contact the Complainant by sending messages to her not to proceed with this complaint. In addition, the Complainant had received phone calls from her own mother requesting her to consider her complaint against the Applicant.

Applicable Law and Analysis of the Current Matter

- 5. Pursuant to **Section 13 (1) (h)** of the **Constitution** and **Section 3(1)** of the **Bail Act of 2002**, every person charged with an offence has a right to be released on bail, unless granting of bail is not in the interest of justice. **Section 3 (3)** of the **Bail Act of 2002** stipulates that there is a presumption in favor of granting of bail.
- 6. However, this presumption in favour of granting bail will be displaced under the conditions highlighted in **Section 3 (4)**, as below:

“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. In this matter, there is no contention regarding the Applicant previously breaching any bail undertaking or bail condition and there is no need for this Court to consider the second ground that could displace the

presumption in favour of bail, as well i.e. whether the person has been convicted and has appealed against the conviction.

8. In considering bail in this case, there is no contest of the Complainant's connection to the Applicant. Therefore, there is clear and disturbing Domestic Violence in this matter which the Court should consider, where the Complainant is the biological daughter of the Applicant. This situation clearly displaces the presumption in favour of granting bail.
9. While taking due credence of the primary consideration for granting of bail, which is the likelihood of the Applicant appearing in Court to answer the charges against him, when the presumption in favor of bail has been displaced with a domestic violence offence, in the interest of justice, this Court needs to weigh all the relevant circumstances when considering bail.
10. Though this Court recognises the presumption of innocence of the Applicant until proved guilty after trial, this Court also has a responsibility to send a strong signal to the community, when action that shatters the fabric of our family relationships with a blatant Domestic Violence offence is reported, as in this matter.
11. As a nation, we take great pride in our closely knit relationships with our close and extended family. That is the very reason that when anybody returns to Fiji you are welcomed by greeting "Welcome Home". This is a very rich tradition we maintain in this country, which could be the envy of others that should not be dissipated at any cost.
12. In situations of this nature where a young citizen in our community is placed between the devil and the deep blue sea, in the Interest of Justice, this Court is of the view that our Judicial System has an additional responsibility to take protective steps for the protection of the citizenry within the law.
13. Having carefully considered the above discussed reasons, I refuse the application of bail pending trial on the ground that the accused person is charged with **domestic violence** offences and the safety of the Complainant is likely to be put at risk if this application is allowed and **bail** is granted.
14. You have thirty (30) days to appeal to the Fiji Court of Appeal.



Hon. Justice Dr. Thushara Kumarage

At Suva
14 June 2022

cc: 1. Office of the Director of Public Prosecutions
2. Legal Aid Commission

