

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

MISCELLANEOUS CASE NO. HAM 51 OF 2023

BETWEEN: **NIKESH CHAND** **APPLICANT**

A N D: **THE STATE** **RESPONDENT**

Counsel: Mr. I. Khan for Applicant
 Ms. P. Kumar for the State

Date of Hearing: 27th March 2023

Date of Ruling: 27th April 2023

BAIL RULING

1. The Applicant filed this bail application stating that he is the family's sole breadwinner. Hence, he needs to continue his business to look after his family. He further stated that his two children are very young, and his wife struggles to look after them with his bedridden sickly old father. The Applicant is willing to relocate to Sarasaro Road, Kinoya, Suva, with his cousin if he is granted bail.
2. The Respondent filed an affidavit of WDC Saivoro Nairara, stating the State's objection to this bail application. The State mainly objects to this application on the grounds that the Applicant could possibly interfere with the main Prosecution witnesses, including the Complainant. The Complainant is his sister-in-law, and his wife and brother-in-law are two

main witnesses of the Prosecution. Moreover, the Prosecution stated that the Applicant is adversely recorded with six previous convictions.

3. The Applicant is charged with two counts of Rape, one count of Sexual Assault and two counts of Defeating the Course of Justice.
4. In pursuant to Section 13 of the Constitution and Section 3 (1) of the Bail Act, every person has a right to be released on bail unless it is not in the interest of justice. According to Section 3 (3) of the Bail Act, there is a presumption in favour of granting bail, but that presumption is displaced if the Accused is charged with a domestic violence offence.
5. In this case, the offences that the Applicant is charged with falls within the meaning of domestic violence offence. Hence, the presumption in favour of granting bail is displaced.
6. The primary consideration in granting bail is the likelihood of the Accused appearing in Court. Section 18 (1) of the Bail Act has stipulated that a person making an application against the presumption in favour of bail must deal with the following grounds:
 - i) *The likelihood of the accused person surrendering to custody and appearing in court,*
 - ii) *The interest of the accused person,*
 - iii) *The public interest and the protection of the community,*
7. The Applicant's main ground is supporting his young family and caring for his sickly old father. His family and business are based in Navua, but he is willing to relocate to Kinoya, Suva with his cousin if he is granted bail. This is a contradicting position as he failed to explain how he plans to continue his business and look after his family and sickly old father while relocating to Kinoya, Suva. As stated by the State, his wife is the Complainant's sister and one of the main Prosecution witnesses. The Complainant is still living in Navua. Hence, the Applicant could interfere with the main Prosecution witnesses if granted bail.

8. Considering the above reasons, I refuse this bail application on the ground that there is a likelihood of interfering with the witnesses pursuant to Section 19 (2) (c) (ii) of the Bail Act.



A handwritten signature in black ink, appearing to be "R.D.R.T. Rajasinghe", is written over a horizontal dotted line.

Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

27th April 2023

Solicitors

Iqbal Khan & Associates for the Applicant.

Office of the Director of Public Prosecutions for the Respondent.