

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO. HAM 160 OF 2023

TEMO LEDUA

vs.

STATE

Counsels:

Mr. Varinava T-
Ms. Semisi K -

for Accused
for State

BAIL RULING

1. The Applicant in this matter is charged with few others for the commission of the offence of Rape, contrary to **Section 207 (1) together with 2 (a)** of the **Crimes Act of 2009** and has filed this bail application seeking bail. This is the applicant's first bail application since he was arrested and remanded.
2. The State has filed its response to this bail application, objecting to bail, supported by the affidavit tendered by, **WDC 3366 Pritika of the Valelevu police station**, the Investigating Officer, dated 25th May 2023.
3. Submissions in support of bail on behalf of the Applicant.
 - i) It is asserted by the Applicant that under the prevailing law of the country, he has a right to be granted bail.
 - ii) It is submitted further that under our law the primary consideration for granting bail is the likelihood of him appearing in Court to answer the charges against him and if bail is granted, he will reside in his permanent address in **Delaivalelevu**. Therefore, there is no risk of his appearance in Court in this matter.

4. Submissions of the State in opposition to bail;

- i) It is contended for the State that the Prosecution witness **Lusiana Cama** who resides in **Delaivalelevu** has been threatened by the accused persons in this matter not to give a statement to the police and if bail is granted to the accused there is a possibility of further aggravation of the situation.
- ii) It is further submitted for the State that as a result of the threats of the accused, witness **Lusiana Cama** is currently attempting to retract from her statement to the police. Therefore, granting of bail to the accused would further jeopardize the Prosecution case of a gang rape in our society.

Analysis and Determination of Court

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 –***

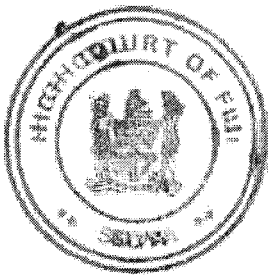
- (a) the person seeking bail has previously breached a bail undertaking or bail condition;*
- (b) the person has been convicted and has appealed against the conviction; or*
- (c) the person has been **charged with a domestic violence offence.**”*

7. In this matter, as agreed by both parties, there is no application of any of the above grounds that could vitiate the presumption in favour of bail against this Applicant.

8. Nevertheless, considering the submissions of the State of the interference of the accused with vital witnesses for the trial, this Court needs to take all possible steps to assure a fair trial in the interest of justice.

9. This situation is further aggravated by the fact that the Accused undertakes to reside in **Delaivalelevu** if bail is granted. Ironically that locality is due to be the place of residence of the State witness **Luciana Cama**. Therefore, if bail is granted by this Court, the Applicant would be residing in the same locality the interfered state witness is residing.

- 10 While recognising the pronouncement of **His Lordship the Chief Justice** in the case of **Kumar v State [2021]**¹, where it has been highlighted that priority should be given in granting bail to the consequent probability of the accused appearing in Court to face his charge, this Court is of the view that the circumstances of this case can be distinguished in the interest of justice in view of fair trial.
- 11 For this end, while venturing to fix the substantive matter to trial at the earliest possible date, this Court needs to debunk any possible influences against a fair trial by interfering with witnesses and allow the victim and witnesses to give evidence in Court without any external influence.
- 12 Having carefully considered the above discussed reasons, this Court refuses the application of bail pending trial at this juncture on the ground that the accused person is charged with a very serious offence and witnesses expected at trial are likely to be put at risk if this application is allowed and **bail** is granted.
- 13 You have thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in black ink, appearing to read 'Thushara Kumarage', written over a horizontal line.

Hon. Justice Dr. Thushara Kumarage

At Suva
This 19th day of June 2023

cc: *Office of Director of Public Prosecutions*
Office of Legal Aid Commission

¹ FJSC 1; CAV 20 of 2020 (5 February 2021)