

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL MISC. NO. HAM 205 OF 2023

CRIMINAL MISC. NO. HAM 234 OF 2023

CRIMINAL CASE NO. HAC 192 OF 2023

CRIMINAL CASE NO. HAC 292 OF 2022

BETWEEN : **MOSESE GASAUDROKADROKA**

AND : **STATE**

Counsel : Ms N Tikoisuva for the Accused
Ms J Fatiaki for the State

Date of Hearing : **4 August 2023**

Date of Ruling : **18 August 2023**

RULING

- [1] The accused allegedly reoffended while he was on bail. On 15 June 2023, he was charged with new offences and remanded in custody. He seeks bail in the new case and the State objects to the granting of bail in the new case and seeks to revoke his bail in the earlier case.
- [2] In the Criminal Case No. HAC 292 of 2022, the accused is charged with one count of rape. The alleged incident occurred on 6 August 2021 at Waila, Nausori. The accused pleaded not guilty to the charge. On 29 September 2022, he was released on bail pending trial. One of the conditions of his bail was for him to be of good behavior and not to commit any offence while on bail.

- [3] On or about 13 June 2023, the accused was arrested and charged with fresh offences that he allegedly committed on 21 April 2023 while on bail. In the new Case No HAC 192 of 2023, the accused is charged with three counts of rape and one count each of assault causing actual bodily harm and wrongful confinement.
- [4] The accused seeks bail on medical grounds. Dr Vulibulu, Senior Medical Officer, Fiji Corrections Services has written a medical report for the accused.
- [5] The accused was diagnosed with the following medical conditions:
1. Type 2 Diabetes – Diagnosed on 26 July 2023.
 2. Hyperlipidemia – Diagnosed on 1 August 2023.
- [6] According to Dr Vulibulu the remand facility is not conducive to treat the accused's medical conditions and that he is better off out on bail to be cared by his family.
- [7] Section 3 (2) of the Bail Act gives the court discretion to grant or refuse bail to an accused. Section 19 of the Bail Act sets out the principal factors to be considered when exercising the discretionary power to determine bail. The factors are:
- (i) Whether the accused is likely to appear for trial?
 - (ii) Whether it is in the accused's interest to release him on bail?
 - (iii) Whether releasing the accused on bail will endanger the public interest or make the protection of the community more difficult?
- [8] The complainant in the new case is a 19 year old tertiary student. The prosecution case is that on 21 April 2023 the complainant was in the company of the accused when an altercation occurred between the accused and an employee of the Total Service Station at Waila. The altercation was captured by the Service Station's CCTV. During the altercation the employee was allegedly assaulted and injured. Later on

the same day, the accused allegedly confined and raped the complainant at a remote location.

[9] According to the investigating officer, the accused was not arrested until 13 June 2023 as he was actively evading police.

[10] The accused has five other pending cases in the Magistrates' Court, namely:

- (i) CF 523/22 Assault Causing Actual Bodily Harm to two women alleged to have been committed on 8 October 2022.
- (ii) CF 331/21 Burglary and Theft alleged to have been committed on 26 February 2021.
- (iii) CF 415/21 Criminal Intimidation alleged to have been committed on 12 May 2021 where he threatened a Police Officer that he would stab him when he is released.
- (iv) CF 42/21 Failure to Supply Sufficient Breath Specimen, Dangerous Driving and Driving Motor Vehicle without a Licence alleged to have been committed on 12 March 2021.
- (v) CF 43/21 Failure to Comply With Requirements of an Accident and Dangerous Driving Causing Grievous Bodily Harm and Driving Motor Vehicle without a Licence alleged to have been committed on 12 March 2021.

[11] Further, the accused has eight active previous convictions for offences, namely, escaping from lawful custody, receiving stolen property, assault causing actual bodily harm, abduction, burglary, theft, possession of illicit drug and act with intent to cause grievous harm.

[12] The accused is 31 years old and works casually as a logger. The accused does not seem to have strong community ties or stable employment. He has an appalling

criminal record which includes offences involving use of violence and escaping from lawful custody. The prosecution case based on the complainant's account in the new case is potentially strong. Rape is a serious offence. The accused is potentially facing life imprisonment if found guilty of rape. He is likely to evade trial if released on bail.

[13] While in custody the accused engaged counsel of his choice to seek bail. His condition of custody is not an impediment for him to instruct counsel to prepare for trial. The trial is likely to be heard within 18 months.

[14] New charges arose within six months after the accused was released on bail.

[15] In *Elia Manoa v State* Misc Cr Case No HAM0095 of 2010 (2 June 2010) this Court said at [13]:

Although the new charges are not in any way evidence of guilt, the factor is of considerable importance when determining the likelihood of the accused person committing an arrestable offence while on bail.

[16] Multiple charges are pending against the accused in the High Court and in the Magistrates' Court. In at least two cases, charges arose while the accused was on bail. There are substantial grounds for believing that, if released, he would commit a further offence and threaten public safety.

[17] The accused is presumed to be innocent until proven guilty by the prosecution. In this case, the prosecution submits that the presumption in favour of the granting of bail is displaced in the new case because the accused has breached a condition of his earlier bail. I agree. The accused is in breach of his good behavior bail condition for allegedly committing offences while on bail.

[18] Further, I considered the medical conditions of the accused, but I am not satisfied that his sickness is exceptional to release him on bail. As Marshall JA said in *Singh v State* [2010] FJCA 53; AAU0083.2010 (16 December 2010):

...The only exception is where an incurable illness is in its last phase and the prisoner has only a few months to live.

[19] **Result**

Bail refused in Criminal Case No HAC 192 of 2023.

Bail revoked in Criminal Case No HAC 292 of 2022.



A handwritten signature in black ink, appearing to read "D. Goundar", is written above a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

Office of the Director of Public Prosecutions for the State

Toganivalu Legal for the Accused