

**IN THE HIGH COURT OF FIJI**  
**AT LAUTOKA**  
**MISCELLANEOUS JURISDICTION**

**CRIMINAL MISC. HAM NO. 83 OF 2024**

**BETWEEN** : **TANIELA KASA RADOVU**

**APPLICANT**

**AND** : **THE STATE**

**RESPONDENT**

Counsel : Ms. K. Vulimainadave for the Applicant.

: Ms. S. Swastika for the Respondent.

Date of Submissions : 26 August, 2024

Date of Hearing : 26 August, 2024

Date of Ruling : 09 September, 2024

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**RULING**

[Application for bail pending trial]

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1. The applicant seeks bail pending trial by filing his Bail Application Form supported by the affidavits of two proposed sureties namely Joji Seseu the elder brother of the applicant and Paula Radovu the younger brother of the applicant. The affidavits were sworn on 17<sup>th</sup> May, 2024, both the proposed sureties understand their roles and responsibilities if accepted

as a surety. The elder brother of the applicant is happy to accommodate the applicant at his residence at Narere, Suva. The applicant has also filed his undated affidavit in reply filed in court on the day of the hearing.

2. This application is opposed by the state, they rely on the affidavit of W/ CPL. 3961 Meredani sworn on 4<sup>th</sup> June, 2024.
3. Both counsel filed written submissions and also made oral submissions during the hearing for which this court is grateful.

#### **BACKGROUND INFORMATION**

4. The applicant is charged with four counts of rape and one count of sexual assault under the Crimes Act. It is alleged that the applicant on an unknown date in 2022 unlawfully and indecently licked the complainant's vagina and also penetrated her vagina with his penis. Furthermore, on an unknown date in 2023 the applicant is also alleged to have penetrated the complainant's vagina with his penis. Thereafter on 20<sup>th</sup> February, 2024 the applicant allegedly penetrated the vagina of the complainant with his finger and penis respectively.

#### **APPLICANT'S SUBMISSION**

5. The applicant submits that he is innocent until proven guilty, he is married with five children and the complainant is his daughter. The applicant has no history of absconding bail or breaching bail conditions.
6. If granted bail he will be residing with his elder brother Joji Seseu who is one of the proposed surety's at stage 1, Balolo Roundabout, Narere, Suva. The applicant has no objections if strict bail conditions are imposed

including a curfew, non-molestation and non-contact domestic violence restraining orders to protect the complainant and the other prosecution witnesses

7. The applicant is also providing two sureties in support, the sureties have control over him and he assures the court that he will abide by all the terms and conditions of his bail. The applicant has been in remand since February 2024. In respect of the prosecution submission that they have a strong case the applicant says the defence will test the veracity of prosecution witnesses and in any event this is a trial issue.
8. The likelihood of interference with the prosecution witnesses is not strong enough because the applicant is going to be relocated and strict bail conditions can be imposed. The submission by the state counsel that the applicant had prevented the applicant's mother from reporting the incident in 2022 should not be accepted by this court in the absence of any affidavit by the mother of what had happened. The police statement of the complainant is hearsay since the complainant was not present and therefore she cannot attest to the fact that the applicant had acted in the manner mentioned above.

### **RESPONDENT'S SUBMISSIONS**

9. The prosecution submits that the facts of the case are worrying. The complainant is the third child of the applicant. The applicant is alleged to have committed serious offences against the complainant. The complainant had informed the police as per her police statement annexure "A" that in the year 2022 the applicant had interfered by preventing the complainant's mother from lodging a police complaint against the applicant about what he was allegedly doing to the complainant.

10. The state counsel further submitted that the complainant is an 11 year old biological daughter of the applicant. The state's case is also dependent on an eye witness another daughter of the applicant in respect of count five and the wife of the applicant. The closeness of the relationship between the applicant and the prosecution witnesses indicate that there is a high likelihood that the applicant may interfere with the prosecution witnesses. The state is ready for trial proper and the court has assigned 11<sup>th</sup> November, 2024 as the hearing date.

### **LAW**

11. Section 3 of the Bail Act states that every person has a right to be released on bail unless it is not in the interest of justice that bail should be granted. The prosecution must rebut this presumption when bail is objected to. The presumption in favour of the granting of bail inter alia gets displaced where the person seeking bail has previously breached a bail undertaking or a bail condition or has been charged with a domestic violence offence.
12. The relevant considerations which this court must take into account when determining whether bail is to be granted or not is mentioned in section 19 of the Bail Act. The three broad categories are:
- a) the likelihood of surrender to custody and appearing in court;
  - b) the interest of the accused person,
  - c) the public interest and protection of the community
13. Section 19 (2) of the Bail Act states a police officer or court must have regard to all the relevant circumstances and in particular-
- (a) as regards the likelihood of surrender to custody –*

- (i) the accused person's background and community ties (including residence, employment, family situation, previous criminal history);*
- (ii) any previous failure by the person to surrender to custody or to observe bail conditions;*
- (iii) the circumstances, nature and seriousness of the offence;*
- (iv) the strength of the prosecution case;*
- (v) the severity of the likely penalty if the person is found guilty;*
- (vi) any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country);*
- (b) as regards the interests of the accused person-*
  - (i) the length of time the person is likely to have to remain in custody before the case is heard;*
  - (ii) the conditions of that custody;*
  - (iii) the need for the person to obtain legal advice and to prepare a defence;*
  - (iv) the need for the person to beat liberty for other lawful purposes (such as employment, education, care of dependants);*
  - (v) whether the person is under the age of 18 years (in which case section 3(5) applies);*

- (vi) *whether the person is incapacitated by injury or intoxication or otherwise in danger or in need of physical protection;*
- (c) *as regards the public interest and the protection of the community-*
- (i) *any previous failure by the accused person to surrender to custody or to observe bail conditions;*
- (ii) *the likelihood of the person interfering with evidence, witnesses or assessors or any specially affected person:*
- (iii) *the likelihood of the accused person committing an arrestable offence while on bail.*

#### **DETERMINATION**

14. There is no dispute that the facts of the alleged offending are serious arising from a domestic and family relationship hence the presumption in favour of granting of bail is displaced. This court agrees that the facts of the alleged offending are serious and that there is a real possibility that the applicant once released on bail may interfere with the complainant and/or interfere with the other prosecution witnesses due to the closeness of the relationship.
15. I also note that the allegations are from over a period of time and it is obvious to me that the applicant was a person of authority in the family. Although the applicant has strongly denied any interference in stopping his wife from lodging a police complainant against him this court cannot ignore the other considerations in the Bail Act.

16. The Court of Appeal in *Eliki Seru v State* [2015] FJCA 30; AAU 0152 of 2014 (27 February, 2015) at paragraph 8 explained the meaning of likelihood of interference with witness in the following words:

*As required by section 18(2) of the Bail Act 2002, the trial judge considered each of the criteria and concluded that it was in the public interest to revoke the appellant's bail in light of the fact that the complainant withdrew her police complaint a week before the trial was scheduled to commence and that there was a strong likelihood that she had been interfered with. The word likelihood as used in the Bail Act 2002 does not connote probability. In Livingstone-Thomas v Associated Newspapers Ltd (1969) 90 W.N. (Pt.1) (NSW) 223 Wallace P said at 229: "[I] think the legislature has meant 'likely' in a sense of a tendency or real possibility". This meaning was adopted by Wilson J in Kysely, Re Bail Application [1980] PNGLR 36; 14 April 1980 when considering a similar phrase in the Bail Act 1977 (PNG):*

*"I hold that the word "likely" in the phrase "likely to interfere with witnesses" in s. 9(1) (f) means likely in the sense of a tendency or real possibility. It does not mean "more likely than not", "probably", or "very likely".*

17. This court is mindful that the presumption of innocence is very much in favour of the applicant and that the applicant has been in remand for about six and half months now. In *State vs. Albertino Shankar and Francis Narayan*, Misc. No. HAM 14 of 2003 Gates J. (as he was) at paragraph 9 had observed:

*"The Bail Act 2002 has encapsulated long standing principles of the Common Law and provides guidance to persons charged with the duty of deciding bail, and on the priority of competing considerations. First, the Act makes clear that there is for every accused person an entitlement of bail [Section 3 (1)]. This does no more than reflect the principle of the*

*presumption of innocence, which is also stated by the Constitution [Section 28 (1) (a)]. Section 3 (6) however also states that entitlement will fail if it is not in the interests of justice that bail should be granted.”*

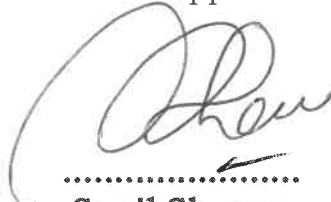
18. Under section 13 (4) of the Bail Act a person can be kept in remand for 2 years or more if the interest of justice so requires.
19. This court cannot be oblivious to the applicant's apparent complicity or involvement in the commission of the offences he is alleged to have committed, although, the applicant strongly argues that he is innocent until proven guilty and he has evidence to create a reasonable doubt in the prosecution case is not a matter for consideration at this point in time but a trial issue.
20. After considering the affidavits filed and the submissions made it is not in the public interest to grant bail to the applicant. There is a real likelihood that the applicant will interfere with the complainant and the other prosecution witnesses whilst on bail. It is also noted that all the pretrial stages have been completed and both counsel are ready for trial proper in 8 weeks time.

### **ORDERS**

- a) The application for bail pending trial is refused;
- b) The hearing date of 11<sup>th</sup> November, 2024 assigned in the substantive matter is maintained;



c) 30 days to appeal to the Court of Appeal.

  
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**Sunil Sharma**  
**JUDGE**



**At Lautoka**

09 September, 2024

**Solicitors;**

**Office of the Director of Public Prosecutions for the State.**

**Office of the Legal Aid Commission for the Accused.**