

**IN THE MAGISTRATES' COURT**  
**AT BA**  
**CRIMINAL JURISDICTION**

*Criminal Case No. 285/2022*

**BETWEEN:**     **STATE**

**PROSECUTION**

**AND:**           **VINOD KUMAR**

**ACCUSED**

**Counsel:**                   A/Sergeant 3443 Vaciseva Marawa for Police Prosecution  
                                  Accused unrepresented and in person.

**Date of Trial:**             1 July 2025  
**Date of Judgment:**     22 August 2025  
**Date of Sentence:**     5 September 2025

**SENTENCE**

Introduction

1. Mr. Vinod Kumar, on 22 August 2025, the Court found you guilty and convicted you for 3 counts of Indecent Assault contrary to section 212(1) of the Crimes Act 2009 and 1 count of Breach of Bail contrary to section 25(1)(b) and 26(1) of the Bail Act 2002 and Bail Amendment Act 2012. The particulars of the offences are:

Count 1  
Statement of Offence

**Indecent Assault:** *Contrary to Section 212(1) of the Crimes Act 2009.*

Particulars of Offence

***Vinod Kumar*** on the 13<sup>th</sup> day of June, 2022 at Namada, Ba in the Western Division unlawfully and indecently assaulted ***Dipshika Gosai*** by kissing her cheek.

Count 2  
Statement of Offence

**Indecent Assault:** *Contrary to Section 212(1) of the Crimes Act 2009.*

Particulars of Offence

***Vinod Kumar*** on the 13<sup>th</sup> day of June, 2022 at Namada, Ba in the Western Division unlawfully and indecently assaulted ***Dipshika Gosai*** by kissing her lips.

Count 3  
Statement of Offence

**Indecent Assault:** *Contrary to Section 212(1) of the Crimes Act 2009.*

Particulars of Offence

***Vinod Kumar*** on the 13<sup>th</sup> day of June, 2022 at Namada, Ba in the Western Division unlawfully and indecently assaulted ***Dipshika Gosai*** by touching her buttocks.

Count 4  
Statement of Offence

**Breach of Bail Condition:** *Contrary to Section 25(1)(b) and 26(1) of the Bail Act 2002 and Bail Amendment Act 2012.*

Particulars of Offence

***Vinod Kumar*** on the 13<sup>th</sup> day of June, 2022 at Ba in the Western Division being bailed by Ba Magistrates Court vide CF 526/21 with the condition not to re-offend breached the said bail condition by re-offending.

2. The brief facts are as follows:
- a. On 13 June 2022 at about 2:15pm, the Complainant was at home with the Accused and Salim. The Accused and Salim had been repairing the stove exhaust whilst the Complainant was in her room.
  - b. Salim called the Complainant requesting her to shine the torch where the exhaust was whilst the Accused held the exhaust. Salim was unable to unscrew one of the screws as such he left to go outside.
  - c. Whilst in the kitchen with the Accused, the Accused stopped holding the exhaust and went near the Complainant and kissed her on the left cheek and then he kissed her on her lips. The Complainant then pushed the Accused away and told him not to do this.
  - d. Afterwards the Accused approached the Complainant again despite the Complainant telling him not to and touched her back and her bum over her clothes whilst saying that she had a nice figure.
  - e. The Complainant was embarrassed, surprised, shocked and panicking. It was then that Salim came in and noticed the Accused was no longer holding onto the rangehood.
  - f. The Complainant went into her room, locked the door and called her dad, telling him that the Accused was not a good man and that he had tried to abuse her. She then requested her dad to come home as soon as possible.
  - g. Upon the Complainant's father - Virendra and his wife reaching home, the Complainant told them everything that the Accused had done.
  - h. DC Tevita was the Investigating Officer in the matter, and he explained that he uplifted the Bail Conditions Form from the Court Registry as the Accused had been previously charged and under his bail conditions, the Accused was not allowed to re-offend. DC Tevita explained that this Bail condition was for a case of Act with Intent to Cause Grievous Bodily Harm in CF 526/21 and that the Accused had been granted bail on 10 November 2021. The Bail Undertaking Form and the Accused Bail Condition Form was tendered as 'PEX1'.

Objective Seriousness

3. Considering the prevalence of such a crime, I find the objective seriousness is high.

Sentencing Purpose

4. Considering that the primary purpose of this sentence is founded on the principle of deterrence, it is the responsibility of the Court to deter others from committing such offences of the same or similar nature as well as to protect the community from those who commit such offences.

5. A deterrent sentence for such offences of this nature demonstrates the gravity of the offence and reflects the society's immediate denouncement of such crimes.

#### Sentencing Regime

6. The maximum penalty for the offence of Indecent Assault is 5 years imprisonment.
7. In the case of **Rokota v State** Criminal Appeal No. HAA0068 of 2002 (23 August 2002) Her Ladyship Justice Shameem when dealing with an appeal of Indecent Assault under the now repealed Penal Code which had a maximum penalty of 5 years imprisonment with or without corporal punishment stated:

*"Sentences for indecent assault range from 12 months imprisonment to 4 years. The gravity of the offence will determine the starting point for the sentence. The indecent assault of small children reflects on the gravity of the offence. The nature of the assault, whether it was penetrative, whether gratuitous violence was used, whether weapons or other implements were used and the length of time over which the assaults were perpetrated, all reflect on the gravity of the offence. Mitigating factors might be the previous good character of the accused, honest attempts to effect apology and reparation to the victim, and a prompt plea of guilty which saves the victim the trauma of giving evidence.*

*These are the general principles which affect sentencing under section 154 of the Penal Code. Generally, the sentence will fall within the tariff, although in particularly serious cases, a five year sentence may be appropriate. A non-custodial sentence will only be appropriate in cases where the ages of the victim and the accused are similar, and the assault is of a non-penetrative and fleeting type. Because of the vast differences in different types of indecent assault, it is difficult to refer to any more specific guidelines than these."*

8. Thus, the tariff would be 12 months to 4 years with 5 years being more appropriate for serious cases and non-custodial sentence being more appropriate for cases where the ages of the victim and the accused are similar, and the assault is of a non-penetrative and fleeting type.
9. The above tariff was also recently used by His Lordship Justice Sharma in **State v Singh** Criminal Case. HAC 048 of 2021 (21 June 2024).
10. The maximum penalty for Breaching of Conditions of Bail is a fine of \$2,000 or 12 months imprisonment or both.
11. In **Ratu v State**; Criminal Appeal No. HAA 89 of 2018 (21 February 2019) His Lordship Justice Madigan referred to the decision of **Saula Lalagavesi** HAA 83/2018LT where His Lordship had stated that the tariff for breaching conditions of bail is from a suspended sentence to 9 months imprisonment.


#### Mitigating and Aggravating Factors

12. The Court notes that mitigation offered by you; however, personal circumstances and family background holds very low mitigatory value in this offending (vide **Raj v State** Appeal No. CAV 0003 of 2014 (20 August 2014).
13. Further, the Court was informed that you are a first offender.
14. In considering the aggravating factors in this matter, the Court finds that:

- i. there was a significant disparity in the age (almost 47 years) between you and the Complainant at the time of the offending;
- ii. you breached the trust of the Complainant who considered you as a grandfather and at whose home you had been working at when you committed these offences against her; and
- iii. your actions have traumatized the Complainant as is evident from the letter/victim impact statement dated 29 August 2025. She is carrying the guilt and shame of your actions. She is also unable to form relationships.

### Sentence

15. Taking note of section 17 of the Sentencing and Penalties Act, I prefer to impose an aggregate sentence for all counts. Considering the objective seriousness and the purpose of this sentence, in this case it is appropriate to have a starting point towards the higher end of the tariff. I accordingly select 3 years or 36 months as the starting point.
16. I will then add 18 months for the aggravating factors mentioned at paragraph 14 herein, making it a total of 54 months imprisonment. For your mitigating circumstances including you being 70 years with no prior convictions, I will deduct 12 months leaving you with a balance of 42 months imprisonment.
17. Section 18(2) of the Sentencing and Penalties Act requires the Court to impose a non-parole period if a court sentences an offender to an imprisonment term for life or for a term of 2 years or more. Thus, considering the seriousness of the crime, the purpose of this sentence and opportunities for rehabilitation, your non-parole period will be for a period of 25 months, effective forthwith.
18. Thus, your sentence is 42 months imprisonment with a non-parole period of 25 months imprisonment.
19. Any party aggrieved with this decision has 28 days to appeal to the High Court.

  
N. Mishra  
Resident Magistrate

