

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

Crim. Misc. Case No: HAM187 of 2010
Crim. Case No: HAC164 of 2010

BETWEEN:

ROHIT SINGH

Applicant

AND:

THE STATE

Respondent

Hearing: 1st September 2010
Ruling: 2nd September 2010

Counsel: Ms S. Vaniqi for Applicant
Mr. S. Vodokisolomone for State

RULING

- [1] The applicant seeks bail pending trial. The State opposes the application.
- [2] The principles governing bail pending trial are contained in the Bail Act. Section 3(1) provides that an accused has the right to be released on bail unless it is not in the interests of justice that bail should be granted. Consistent with this right, section 3(3) of the Act declares that there is a presumption in favour of the granting of bail

to an accused, but a person who opposes the granting of bail may seek to rebut the presumption. In determining whether a presumption is rebutted, the primary consideration in deciding whether to grant bail is the likelihood of the accused appearing in court to answer the charges against him. Bail can be opposed on three grounds provided by section 18(1) of the Act. Section 19(1) provides for three grounds for refusing bail. Section 19(2) sets out a series of considerations the court must take into account in determining the three grounds. In broad terms, bail can be refused if the accused is a flight risk or if it is not in the accused's interest to be released on bail or it is not in the public interest to release an accused on bail.

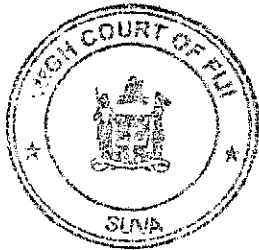
- [3] The applicant is charged with rape, grievous harm, and disorderly conduct in police station. The complainant in the rape and grievous harm charges is the applicant's defacto partner. At the time of the incident, the complainant was residing with him at his mother's home. She moved out of the house after the incident.
- [4] The applicant is employed as a taxi driver. His mother, Reshma Devi, filed an affidavit in support of the application for bail. According to Ms Devi, she is a sickly elderly woman and is financially dependent on the applicant. If the applicant is not released on bail he will lose his job and his livelihood.
- [5] Counsel for the applicant made strong submissions. Ms Vaniqi submits that the applicant is not a flight risk, which is the primary test for bail under the Bail Act, and any risk of interfering with the complainant could be avoided by strict bail conditions. Ms Vaniqi further submits that the strength of the prosecution case is irrelevant and the court should ignore the statement and medical report of the complainant because the evidence has not been tested.
- [6] Counsel for the State submits that the likelihood of the applicant interfering with the complainant is real because the alleged offences arose in a domestic relationship.

The prosecution evidence is strong and is based on the testimony of the complainant. The complainant was physically injured and there is medical evidence of the injuries. Counsel points out that the applicant allegedly re-offended while on a bound-over order for an offence of assault occasioning actual bodily harm. He also has a previous conviction for act with intent to cause grievous harm in 2003 and for indecently annoying female in 2001. The victim in the last assault case was the complainant's brother. Counsel submits that the applicant pose a risk to the complainant and her immediate family members.

- [7] It is well recognized that rules of evidence are relaxed in bail hearings and a court may rely on written hearsay evidence provided it is properly evaluated. It must be borne in mind that a bail hearing is not equivalent to trial hearing, when guilt or innocence is determined.
- [8] The complainant in her written statement to the police gave a detailed account of the offences allegedly committed by the applicant. The complainant said she is in a defacto relationship with the applicant. On the day in question, they went to bed at around 11pm. At around 2am, while the complainant was asleep, the applicant forcefully removed her pants and poked his finger into her anus. She resisted by pushing him away. The applicant retaliated by punching, kicking and stabbing the complainant with a scissors until she lost consciousness. The medical report discloses some serious injuries on the complainant. She further said that there is history of abuse by the applicant on her.
- [9] Upon evaluation of the evidence I am satisfied that the applicant is facing a strong prosecution case. He allegedly re-offended whilst on a bound-over order for an offence of assault committed on the complainant's brother. The applicant by his conduct has demonstrated he has no regard for the law. In my judgment, he is likely to interfere with the safety of the complainant and her immediate family

members if he is released on bail. The complainant is alleging domestic abuse by the applicant. The court recognizes that victims of domestic abuse are generally women and are vulnerable. Because of their vulnerability, the perpetrators of domestic abuse are able to exploit the opportunity and interfere with them. In my opinion, the risk of interference with the complainant in the present case cannot be avoided by imposition of strict bail conditions.

- [10] Neither the medical condition of the applicant's mother, nor the prospect of him losing his job as a taxi driver, constitutes special circumstances to grant bail.
- [11] Bail is refused. The applicant will remain in custody on remand pending trial. The case will be given priority hearing date.
- [12] The applicant is advised that he has a right of appeal to the Court of Appeal within 30 days.



A handwritten signature in black ink, appearing to read "Daniel Goundar".

Daniel Goundar
JUDGE

At Suva
2nd September 2010

Solicitors:

Office of the Legal Aid Commission for Applicant
Office of the Director of Public Prosecutions for State