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IN THE HIGH COURT OF FIJI

AT SUVA

MISCELLANEOUS JURISDICTION

Crim. Misc. Case No: HAM 131/2013

BETWEEN : ESEROMA VAKACEGU

APPLICANT

AND : THE STATE

RESPONDENT

COUNSEL : Ms N Nawasaitoga for Applicant

Ms L Latu for the State

Hearing Date : 02/07/2013

Ruling Date : 17/07/2013

RULING

01. The applicant **ESEROMA VAKACEGU** had applied for bail pending trial. This is his second Bail Application.
02. The applicant has been charged with one count of Abduction of Young Person contrary to section 285 Penal Code and Two counts of Rape contrary to section 207 (1) (2) (a)(c) of the Crimes Decree No: 44 of 2009.
03. The Applicant applies for bail on following new grounds:
 - (1) That he has a suitable surety.
 - (2) That he is going to reside in Bau Island, Tailevu.
04. Section 3(1) of the Bail Act states that an accused has a right to be released on bail unless it is in the interest of justice that bail should not be granted. Consistent with this principle, section 3 (3) of the act provides that there is a presumption in favour of the granting of bail to a person, but a person who opposes the granting of bail may seek to rebut the presumption.

05. In determining whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her. (17(2))
06. Where bail is opposed, section 18(1) requires that the party opposing bail addresses the following considerations:
 - (a) the likelihood of the accused person surrendering to custody and appearing in court;
 - (b) the interest of the accused person:
 - (c) the public interest and the protection of the community.
07. Section 19(1) of the bail act provides that an accused person must be granted bail by court unless:
 - (a) the accused person is unlikely to surrender to court custody and appear in court to answer charges laid;
 - (b) the interest of the accused person will not be served through the granting of bail; or
 - (c) granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.
08. Section 19(2) of the Act sets out a series of considerations that the court must take into account in determining whether or not any of the three matters mentioned in section 19(1) are established. These matters are:
 - (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)
09. The State opposes the bail. The State submits that the Applicant has not adduced any new or special circumstances in his second Bail Application. Therefore requests this court to dismiss his application as per section 30 of Bail Act.

10. The Applicant is 22 years old and is in remand for this case since 25/01/2013. He had studied up to form six. Now he is going to reside at Bau Island, Tailevu. I consider this is a new circumstance. Further he has a suitable surety.
11. Rape is no doubt a serious offences but seriousness of the offence alone cannot form a ground to refuse bail.
12. In considering these matters, the court must bear in mind the presumption of innocence.
13. Having heard both parties, I am not satisfied that the State has succeeded in rebutting the presumption in favour of granting of bail to the applicant. There are some new grounds exists in this case. Hence, interest of justice can be served granting bail on strict conditions. I grant bail to the applicant on the following conditions:
 1. To secure his own attendance at the High Court by standing in his own recognizance in the sum of \$1000.00 (Non-cash).
 2. To provide two sureties. They must sign a bond of \$1000.00 each.
 3. Not to approach any prosecution witnesses directly or indirectly or to interfere with.
 4. To surrender his passport if any to court and not to apply for a travel document. The Director of Immigration is informed of the travel ban on the applicant.
 5. To report to nearest police station on every Monday, Wednesday and Sunday between 6am to 6pm.
 6. Any breach of these conditions is likely to result in cancellation of his bail.
 7. Applicant has to move out from his present address. His new address be furnished before being released on bail.
14. 30 days to Appeal.

P Kumararatnam
JUDGE

At Suva

17/07/2013