

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

Crim. Misc. Case No: HAM 222/2013

BETWEEN : **TUTUNISAU CAUCAU**
APPLICANT

AND : **THE STATE**
RESPONDENT

COUNSEL : **Mr J Savou for the Applicant**
Mr Y Prasad for the State

Hearing Date : **07.11.2013**

Ruling Date : **22.11.2013**

RULING

- [1] The applicant **Tutunisau Caucau** had applied for bail pending trial second time.
- [2] The applicant has been charged for one count of Rape Contrary to Section 207(1) and (2) (a) of the Crimes Decree No: 44 of 2009.
- [3] That the applicant is seeking bail on the following grounds:
- i) That he is 58 years old and is the sole bread winner of the family.
 - ii) His wife is sick.
 - iii) He has two grandsons to look after.
- [4] Section 3(1) of the Bail Act states that an accused has a right to be released on bail unless it is not in the interest of justice that bail should

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.

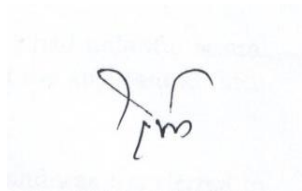
- [5] The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her. (17(2))
- [6] Where bail is opposed, Section 18(1) requires that the party opposing bail addresses the following considerations:
- (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.
- [7] 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.
- [8] 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.
- [9] The State opposes the bail. The State submits that the applicant was released on bail by High Court, Suva on 17/07/2012. After releasing on bail he has been arrested for another offence of Rape. The case is pending before High Court of Lautoka. (HAC 107/13)
- [10] The applicant is charged for one count of Rape and he is in remand for this case since 09/08/2013.
- [11] Trial date has been already set in this case. Trial will be taken up between 17-21/11/2014.
- [12] The applicant reoffended on a similar charge of rape while he was on bail granted by High Court, Suva. He has breached his bail conditions

imposed in this case. Under these circumstances, granting bail to the applicant second time would definitely endanger the public interest or make the protection of the community more difficult.

[13] Considering all these factors into account, especially Applicant's reoffending in a similar offence; it is not in the interest of justice to grant bail to the Applicant.

[14] Bail refused.

[15] 30 days to appeal.

A handwritten signature in black ink, appearing to read 'P Kumararatnam', is centered on the page. The signature is written in a cursive style with a large initial 'P'.

P Kumararatnam
JUDGE

At Suva
22/11/2013