

IN THE HIGH COURT OF FIJI
AT SUVA
MISCELLANEOUS JURISDICTION

Crim. Misc. Case No: HAM 111/2013

BETWEEN : PETER CASSIDY
APPLICANT

AND : THE STATE
RESPONDENT

COUNSEL : Ms Nawasaitoga for the Applicant
Mr M Vosawale for the State

Date of Hearing : 19/07/2013

Date of Ruling : 26/07/2013

RULING

1. The applicant **PETER CASSIDY** had applied for bail pending trial.
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 his wife and children are being deprived of daily necessities, thus, he needs to work and provide for his family.
 - (ii) That he needs to provide for his son who has not been attending school after his arrest.
 - (iii) That he is in remand since 21/03/2013.

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 granting of bail to a person, but a person who opposes 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. 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)

(b) as regards the interest of the accused person –

- (i) the length of time the person is likely to have remained 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 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 to surrender to custody or to observe bail conditions;
- (ii) the likely hood 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.

9. The State opposes the bail. The State submits that the applicant had sexual intercourse with his biological daughter and she was found to be 10 month pregnant at the time of medical examination. He has committed the offence whilst he residing with the victim at his residence.

10. As a result of this incident the applicant's family has now separated and no longer depend on him. State further submits that the applicant has not provided any evidence that his son is not attending school.
11. State fears that the applicant will interfere with prosecution witnesses if he allowed on bail as one of the prime witness is the sister of the victim. The applicant had admitted in his caution interview statement that he had sexual intercourse with his biological daughter disregarding defied social, cultural, religious and traditional rules that prohibits sexual relations with one's own child.
12. The applicant is 42 years old, married and is in remand for this case since 21/03/2013. He has no previous conviction.
13. Rape is serious offence if, convicted applicant could be sentenced to life imprisonment.
14. As per section 3(4) (c) of the Bail Act, in a domestic violence offence, the presumption in favour of granting bail is displaced.
15. Having heard both parties, I am satisfied that the State has succeeded in rebutting the presumption in favour of granting bail to the applicant.
16. Bail refused.
17. You have 30 days to Appeal.

P Kumararatnam

JUDGE

At Suva
26/07/2013