

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 203 OF 2016

BETWEEN : **INIA NAQIA**

Applicant

AND : **STATE**

Respondent

Counsel : **Applicant in Person**
Mr. A. Singh for Respondent

Date of Hearing : **08th December, 2016**

Date of Ruling : **14th December, 2016**

BAIL RULING

1. This is an application for bail pending trial.
2. The Applicant is charged with one count of Rape contrary to Section 207 (1) (a) of the Crimes Decree 44 of 2009.
3. The Applicant is in remand since 8th November, 2106. Information is yet to be filed by the Director of Public Prosecution and no trial date is fixed yet.
4. The application is based on the following grounds:
 - a. Presumption of innocence

- b. Family ties, personal circumstances of the Applicant and need to prepare for his defence
 - c. His strong likelihood to abide by bail conditions
5. The State is objecting to bail. WPC Naomi, the Investigating Officer of Applicant's substantive case, has filed an affidavit stating the grounds of objection.
6. Opposition to bail is based on following grounds:
- a. Charge against the Applicant is serious and entails a severe punishment, if found guilty.
 - b. Case against the Applicant is strong and therefore likelihood of not appearing in Court to face trial is high.
 - c. Probable interference with the victim.
 - d. Propensity of the Applicant to reoffend and violate bail conditions.

The Law Relating to Bail

7. There is a presumption in favour of the Applicant's innocence until the charge is proved. There is also a presumption in the Bail Act in favour of granting of bail. That presumption is however displaced when there are valid grounds for detention in the interest of the justice.
8. Section 3(1) of the Bail Act provides:
- “Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted”.*
9. The Constitution of the republic of Fiji provides:

“Every person who is arrested or detained has the right to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require; [Section 13 (1)]; to have the trial begin and conclude without unreasonable delay [14 (2) (g)]; Every person charged with an offence has the right to be presumed innocent until proven guilty according to law [14(1) (a)];”

Analysis

10. The Respondent argues that the charge against the Applicant is serious and it entails a severe punishment if found guilty and therefore, it is highly likely that he would not surrender and appear in Court to face trial if bail is granted.
11. The Respondent, based on the affidavit filed by the Investigating Officer, argues that there is a strong case against the Applicant. Prosecution is seeking to adduce Complainant’s evidence and recent complainant evidence at the trial.
12. At the trial stage, the prosecution is required to prove the guilt of the accused beyond a reasonable doubt. That standard of proof has no application at the bail stage where guilt or innocence is not determined and where punishment is not imposed. The presumption of innocence is a principle of fundamental justice which applies at all stages of the criminal process, but its procedural requirements at the bail stage are satisfied whenever the requirements in the Bail Act are satisfied.
13. Seriousness of the charge of itself is not a valid basis to refuse bail. However, to assess the Applicant’s likelihood of absconding, seriousness of the charge, probable penalty it entails and the strength of the prosecution case are relevant considerations. Vide: Section 19 (2) iii, iv.

14. The State is strongly objecting to bail. The main concern of the Respondent is that the Applicant is charged for this offence whilst he was on bail for a similar offence. The Applicant was granted bail by this Court on 11th May, 2015 in case no. HAC 61/15 in which he was charged for Rape. Applicant has already breached a bail condition when he is charged for an offence of similar nature. Presumption in favour of bail is displaced when there is a violation of a bail conditions.
15. The other concern of the State is the Applicant's propensity to interfere with the victim who is the main witness in the substantive case. The Applicant and the victim are closely related and living in the same locality. As per the victim's statement, the Applicant is the uncle of the victim. The Investigating Officer has rejected the claim that the victim and the Applicant are residing quite a distance from each other. She says that Saunaka village where the victim resides and Black Rock where the Applicant resides are located close to each other. Therefore, there is a strong likelihood of the Applicant interfering with the victim.
16. Bail is denied only for those who pose a "substantial likelihood" of reoffending or interfering with the administration of justice, and only where this "substantial likelihood" endangers public interest. The bail system does not function properly if an accused interferes with the administration of justice or commits crimes while on bail. While it is impossible to make exact predictions about recidivism and future dangerousness, exact predictability of future dangerousness under the Bail Act is not mandated. It is sufficient that the bail system establish a likelihood of dangerousness.
17. When considering the past criminal record of the Applicant coupled with his previous bail violation, I am satisfied that there is a real likelihood that the Applicant will reoffend while on bail. The seriousness of the offence and the past criminal record of the Applicant should be taken into account in protecting the public and ensuring their safety and security. I am also satisfied that there is a real likelihood of interference with the victim who is the main witness of this case and the administration of justice process.

18. For the reasons given, I refuse to grant bail to the Applicant.

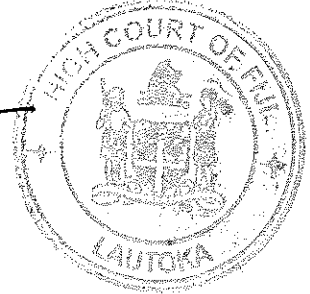
19. Order- Bail refused.

20. 28 days to appeal.



Aruna Aluthge

Judge



At Lautoka

14th December, 2016

Solicitors: Applicant in Person

Office of the Director of Public Prosecution for the Respondent