

IN THE HIGH COURT OF FIJI
AT SUVA
[CRIMINAL JURISDICTION]

Criminal Miscellaneous Case No. HAM 257 of 2018
[High Court Criminal Case No. HAC 229 of 2018]

BETWEEN : SEMI RANATAWAKE

AND : STATE

Counsel : Ms L Ratidara for the Accused
Ms L Bogitini for the State

Date of Hearing : 20 September 2018
Date of Ruling : 24 October 2018

RULING


- [1] The Accused seeks bail pending trial. He is charged with digital rape of a 6 year old girl. The alleged incident occurred on 11 May 2018 on the island of Lakeba. The child complainant is from the same village as the Accused.
- [2] The prosecution case is that the Accused invited the child complainant inside his house and licked her vagina. The alleged incident was witnessed by a fellow villager.
- [3] The villager who witnessed the alleged incident reported it to the complainant's mother. The complainant told her mother about the alleged incident when the mother questioned her.
- [4] The defence case is that both the child complainant and the eye witness to the alleged incident had fabricated the allegation and that the alleged incident had not occurred.

- [5] The Accused is 37 years old. He earns a living by farming. His only relative in Suva is his younger brother who is a market vendor. His community ties are not strong.
- [6] The Bail Act 2002 (the Act) codifies much of the law relating to bail. Part II of the Act contains provisions of general application. The Act provides for two presumptions. An accused has an entitlement to bail (s 3(1)). This does no more than reflect the principle of the presumption of innocence, which is also stated in the Constitution. The entitlement will fail if it is not in the interests of justice that bail should be granted. Secondly, there is a presumption in favour of the granting of bail (s 3(3)). However, that presumption is rebuttable if it can be shown that the accused has previously breached a bail undertaking or bail condition, or been convicted and has appealed against the conviction (s 3(4)).
- [7] Section 17(2) of the Act states that the primary consideration in determining whether to grant bail is the likelihood of the accused appearing in court to answer the charge laid against him or her. The Court must also take into account the time the accused may have to spend in custody before trial if bail is not granted. The current practice of this Court is to hear the trial of an accused person who has been refused bail within 12 months from the date of arraignment. So if bail is not granted to the Accused the time in custody while in remand will be about 12 months.
- [8] Although the primary consideration in determining whether to grant bail is the likelihood of the accused person appearing in court to answer the charge (s 17(2), the court may refuse bail if the interests of the accused person will not be served through the granting of bail or the granting of bail would endanger the public interest or make the protection of the community more difficult (19(1)).
- [9] All things considered, on the material before me it seems that the prosecution has a strong potential case against the Accused. I have no doubt that he must realize this and one cannot ignore at least the possibility that faced with a serious charge with serious consequences on conviction that the temptation not to answer to his bail at trial would be nothing short of overwhelming. I am also mindful that rape is

punishable by life imprisonment. If the Accused is convicted, he is potentially looking at a long prison sentence. The witnesses are known to the Accused. The Accused might interfere with them if he is released on bail. I am satisfied that it is not in the interests of justice to grant bail.

- [10] Bail is refused. The Accused will remain in custody on remand pending trial. A priority trial date will be assigned to this case.




Hon. Mr Justice Daniel Goundar

Solicitors:

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