

IN THE HIGH COURT OF FIJI

AT LABASA

MISCELLANEOUS JURISDICTION

MISCELLANEOUS CASE NO: HAM 049 OF 2018LAB

BETWEEN : GABIRIELE BUARAKI

APPLICANT

AND : THE STATE

RESPONDENT

Counsels : Ms. R. Boseiwaqa for Applicant
Ms. A. Vavadakua for Respondent

Hearing : 28 November, 2018

Ruling : 28 November, 2018

Written Reasons: 30 November, 2018

WRITTEN REASONS FOR DENIAL OF BAIL

1. In Labasa High Court Criminal Case No. HAC 064 of 2018LAB, the applicant (accused) is facing the following information:

COUNT 1

Statement of Offence

RAPE: Contrary to Section 207 (1) and (2) (a) and (3) of the Crimes Act 2009.

Particulars of Offence

GABIRIELE BUARAKI, between the 1st day of July 2017 and the 31st day of July 2017, at Qaranivai, in Dogotuki, in the Northern Division, penetrated the vagina of **A.B.**, a child under the age of 13 years, with his penis.

COUNT 2

Statement of Offence

PROCURING ANOTHER TO WITNESS AN ACT OF GROSS INDECENCY:

Contrary to Section 210 (1) (b) (ii) of the Crimes Act 2009.

Particulars of Offence

GABIRIELE BUARAKI, between the 1st day of January 2018 and the 31st day of January 2018, at Qaranivai, in Dogotuki, in the Northern Division, procured **A.B.**, without her consent, to witness an act of gross indecency.

2. The applicant first appeared in the Labasa Magistrate Court on 16 August 2018. He had been remanded in custody since then. So, he had been in custody for approximately 3 months 14 days. On 11 October 2018, he applied for bail using the standard High Court bail application form for unrepresented accused. The matter was first called in the High Court on 12 October 2018. On 28 November 2018, the applicant was represented by Legal Aid counsel, Ms R. Boseiwaqa. I heard the parties. I denied bail thereafter, and said I would give my written reasons today. Written below are my reasons.
3. Every accused persons has a right to be on bail prior to trial, unless the interest of justice requires otherwise. The test for bail was whether or not the accused would turn up for trial on the date arranged. In examining that issue, the court was duty bound to consider the factors laid out in section 19 of the Bail Act 2002.

Factor No. 1: Likelihood of Accused's Surrender to Custody:

4. The accused was 39 years old. He is married to the complainant's mother. The accused is the complainant's step-father. The accused is a subsistence farmer and resided with the complainant, her mother and other siblings. According to the prosecution, they had a strong case against the accused. They had the complainant's direct evidence, medical reports and the accused's alleged confession. If the accused is found guilty after trial, he will face a prison

sentence between 11 and 20 years imprisonment. Under this head, the accused's chances of bail are slim.

Factor No. 2: The Interest of the Accused:

5. The accused will be tried sometime next year. That would occur 2 years prior to trial time. The court is entitled to hold people in remand 2 years prior to trial. However, if he's found guilty after trial, time spend in remand while awaiting trial, will be deducted from his final sentence. He had not complained about the condition of his custody. He is represented by Legal Aid counsel, and they can visit him in custody to prepare his defence, as and when they pleased. There does not appear to be any valid reasons for him to be at liberty for other lawful reasons. He is not incapacitated. Under this head, the accused's chances of bail are slim.

Factor No. 3: Public Interest and Protection of the Community:

6. The allegations against the accused were very serious. He allegedly raped his 14 years old step-daughter and allegedly invited her to sit on his erect penis. Although the accused was presumed innocent until proven guilty beyond reasonable doubt in a court of law, in my view, it was in the public interest and the protection of the community that he be remanded in custody until further orders of the court. Under this head, his chances of bail are slim.

Factor No. 4: Domestic Violence Offence:

7. The accused allegedly raped his 14 year old step-daughter. It is a domestic violence offence. Obviously, the safety of his step-daughter would be put at risk if he is released on bail. The chances of interfering with her evidence would be high. Under this head, his chances of bail are slim.

Conclusion

8. Given the above factors, I denied him bail on 28 November 2018. The above are my reasons. He is remanded in custody until further orders of the court.



Salesi Temo
JUDGE

Solicitor for Applicant:
Solicitor for Respondent:

Legal Aid Commission, Labasa
Office of Director of Public Prosecution, Labasa