

IN THE HIGH COURT OF FIJI  
AT LAUTOKA  
CRIMINAL MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 003 OF 2018

BETWEEN: EDWIN ELVIN KUMAR

AND : STATE

Applicant  
Respondent

Counsel : Applicant in Person  
Ms. S. Kiran for Respondent

Date of Hearing : 23<sup>rd</sup> February, 2018

Date of Ruling: 27<sup>th</sup> February, 2018

BAIL RULING

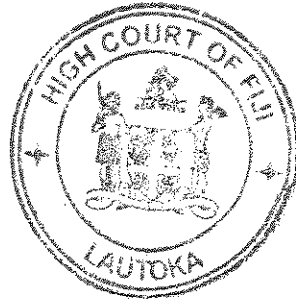
1. The Applicant applies for bail pending trial. He is charged with one Count of Rape contrary to Section 207 and one Count of Sexual Assault contrary to Section 210 respectively of the Crimes Decree 44 of 2009. Complainant in the substantive matter is his wife.
2. The State filed their response supported by the affidavit of DC Apakuki. The State is objecting to bail on the grounds stated in the affidavit.
3. The Applicant was granted bail by this Court on the 12<sup>th</sup> June, 2015 with stringent bail conditions.
4. His bail was revoked by this Court when it found Applicant breaching bail conditions and interfering with prosecution's witnesses. He had been in remand since 1<sup>st</sup> September, 2015 till 27<sup>th</sup> April, 2016. Applicant's application for bail dated 8<sup>th</sup>


February, 2016 was refused by this Court. Having refused bail to the Applicant, Court advanced the trial date which had earlier been fixed for 22<sup>nd</sup> August, 2016.

5. Unfortunately, the new trial date was not suitable to the Applicant. Respecting Applicant's right to a counsel and his right to have ample time to prepare for his defence, Court vacated the trial on his request.
6. The Applicant was granted bail on 27<sup>th</sup> April, 2016.
7. On the 22<sup>nd</sup> August, 2016, when the case was taken up for hearing, Applicant's Counsel was not present in Court. Therefore, another old matter was taken up for hearing and Applicant's trial was vacated. Applicant's trial was re-fixed for 28<sup>th</sup> June, 2017.
8. Applicant failed to appear in Court on 24<sup>th</sup> February, 2017 and a bench warrant was issued returnable on 27<sup>th</sup> March, 2017. On 27<sup>th</sup> March, 2017, the bench warrant was re-issued as the State had failed to execute the warrant. The bench warrant was cancelled on 27<sup>th</sup> April 2017 when the Applicant surrendered to Court. The trial was fixed for 26<sup>th</sup> June, 2017.
9. On 26<sup>th</sup> June, 2017, the Applicant was not ready for trial and requested another trial date as his counsel Mr. P. Naidu was engaged in another trial in Suva. Court refused the application and advised him to prepare for the trial on 28<sup>th</sup> June, 2017. On 28<sup>th</sup> June, 2017 when the case was taken up for hearing Applicant failed to appear to face his trial.
10. Applicant's explanation for his failure to attend court on trial date is that he misunderstood the date. On the 26<sup>th</sup> June, 2017, two days prior to the trial date, he was clearly informed of the trial date and advised him to prepare for the trial.
11. Applicant's explanation for his absence on trial date is not acceptable. He has been given ample opportunity to abide by bail conditions. He had ample time to surrender to court. But he failed to abide by bail conditions. He did not come to court until he was arrested by police. He has brought suspicion upon himself.
12. Applicant's substantive matter will be taken up for hearing on 3<sup>rd</sup> of April 2018 as scheduled.

13. Order-  
Bail refused.

14. 30 days to appeal to the Court of Appeal.



  
Aruna Aluthge  
Judge

At Lautoka  
27<sup>th</sup> February, 2018

Solicitors: Applicant in Person  
Office of the Director of Public Prosecution for the Respondent