

IN THE HIGH COURT OF FIJI

AT SUVA

CRIMINAL MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 33 OF 2019

BETWEEN : **SUNIL DUTT BIRJU**

Applicant

AND : **STATE**

Respondent

Counsel : **Mr. V. Filipe for Applicant**
Ms. S. Shameem for Respondent

Date of Ruling : **8th March, 2019**

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) and 2(a) of the Crimes Act. There is no trial date fixed so far for his substantive matter. The Applicant has been in remand since 5th February, 2019.

3. The Applicant is the husband of the complainant and therefore he is in a domestic relationship under the Domestic Violence Act where the presumption in favour of granting bail is displaced.
4. The State is objecting to the application on the ground that the Applicant is likely to interfere with the complainant who is the main witness for prosecution.
5. The State is also objecting to the proposed sureties. The objection to the 1st proposed surety is that he is currently residing with the Applicant at a residence located in the same vicinity as the complainant. The objection to the 2nd proposed surety is that she is Applicant's younger sister who is not in a position of authority or power to ensure that the Applicant will abide by bail conditions imposed by court.
6. The Applicant has no previous convictions or pending cases. There is no evidence that he has violated previous bail conditions. He is an engineer by profession and willing to relocate himself at a place quite distant from complainant's place of residence. He is ready to hand over his passport to court's custody and willing to give an undertaking to court that he will not interfere directly or indirectly with the witnesses for prosecution.
7. There is no reason why stringent bail conditions would not be sufficient to guard against potential risk of witness interferences. I am of the view that the concerns raised by the Respondent can be addressed by imposing stringent bail conditions to ensure that the witnesses for prosecution are not interfered with and the Applicant abide by bail conditions.
8. For the reasons given, I allow the application for bail on following bail conditions:
The Applicant
 - i. to provide personal bail bond for 500 FJD.
 - ii. to provide surety bail bond for 1000 FJD with two sureties acceptable to court.

- iii. not to interfere with the complainant or other witnesses for prosecution.
 - iv. to reside with one of the sureties at the address given to court.
 - v. to surrender travel documents to court.
 - vi. to report to the Nausori Police Station on the last Saturday of the month between 8 am and 4 pm.
9. I issue an Interim Domestic Violence Restraining Order against the Applicant with non molestation and non-contact orders.
10. The Application for bail is allowed.




Aruna Aluthge
Judge

At Lautoka

8th March, 2019

Solicitors: Haniff Tuitoga, Barristers, Solicitors, Suva for the Applicant
Office of the Director of Public Prosecution for the Respondent