

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

Criminal Miscellaneous Case No. HAM 83 of 2019
[High Court Criminal Case No. HAC 057 of 2017]

BETWEEN : LAWRENCE PRASAD

AND : STATE

Counsel : Mr Naivalu for the Applicant
Ms Naibe for the State

Date of Hearing : 09 May 2019

Date of Ruling : 24 May 2019

RULING

1. The Applicant filed this notice of motion on 09 April 2019 through his lawyer seeking bail pending trial. He is indicted for one count of indecent assault and five counts of rape.
2. When the first bail application was made the State had not objected for granting bail. It does not appear that the State had informed the court that there is a domestic relationship between the complainant and the Applicant. In any event the Applicant had been granted bail previously in HAM 59 of 2017 on 12 April

2017. Later, he failed to appear in court on three consecutive days from 08 October 2018. As a result, a bench warrant was issued against him and the on 28 January 2019 the Applicant appeared in court.

3. The Applicant did not provide a reasonable excuse for not appearing in court and therefore his bail was revoked.
4. Subsequently the present application for bail is filed by the Applicant. He has tendered an affidavit together with his notice of motion. I have considered the affidavit where he has stated the following:
 - a. He apologizes for not attending court in three occasions
 - b. He blames himself for not attending court as he does not have any good cause
 - c. He lives in a de facto relationship
 - d. He is 23 years of age
 - e. He has one pending case for assault and one previous conviction for assault
 - f. He is willing to abide by strict bail conditions
 - g. He promises not to infringe any bail conditions in the future
5. Section 3(1) of the Bail Act provides that every person has a right to be released on bail unless it is not in the interest of justice that bail should be granted. Further Section 3(3) of the Bail Act states that there is a presumption in favour of the granting of bail to a person.
6. However, the presumption in favour of granting bail is rebuttable, and the Bail Act provides for instances where the presumption is displaced as per Section 3(4) in any of the following circumstances;
 - a) The person seeking bail has previously breached a bail undertaking or bail condition;
 - b) The person has been convicted and has appealed against the conviction; or
 - c) The person has been charged with a domestic violence offence.

7. Section 17(2) of the Act provides that the primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him or her.
8. Section 19 of the Bail Act states that an accused person must be granted bail unless the court is of the opinion that;
 - a. The accused person is unlikely to surrender to custody and appear in court to answer the charges laid;
 - b. The interests of the accused person will not be served through granting of bail;
 - c. Granting bail to the accused person would endanger the public interest or make the protection of the community more difficult; or
 - d. The accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the conditions that could be applied if bail were granted.
9. According to His Lordship Justice Goundar in **Isimeli Wakaniyasi v The State** (2010) FJHC 20; HAM 120/2009 (29th January 2010) existence of any one ground is sufficient to refuse bail. In light of the above discussed provisions in the Bail Act, I will now consider the material placed before this court in relation to the bail application made on behalf of the Applicant.
10. The Applicant has clearly breached bail by not attending court. It appears that he has deposed in his affidavit which was filed in his previous bail application that *"I will give an undertaking to the court that I will take whatever steps are necessary to adhere to any of the bail conditions imposed by the court."* Regardless of what he has deposed in his previous affidavit, the Applicant failed to adhere to the bail conditions and absconded court. Further it appears that his previous sureties were his sister and the brother in law. It does not appear the previous sureties at least showed any interest in the matter or made any attempts to bring the Applicant to court. In that backdrop I am not satisfied that the Applicant will honour his bail conditions if he is granted bail again.

11. The Applicant has breached his bail by failing to attend court. Further it appears that the offences that the Applicant is indicted for are domestic violence offences. Undoubtedly, the presumption of bail is displaced for those reasons.
12. Even if the presumption is displaced it does not mean that bail should be necessarily refused. I have considered whether there are compelling grounds which justify the Applicant to be released on bail. But the Applicant has not submitted any compelling grounds to consider bail.
13. I am mindful of the fact that the court has to consider the time that he will be spending in custody pending trial. The Applicant has allegedly committed the offences in 2016. It is very likely that this matter will be taken up for trial within this year. Therefore, I do not have any reason to believe that the Applicant will have to spend a prolonged period in custody pending trial.
14. In the circumstances I am of the view that it is not in the interest of justice to grant bail in this matter. Bail is refused.



Rangajeeva Wimalasena
Acting Judge

Solicitors:

Law Naivalu Barristers & Solicitors for the Applicant

Office of the Director of Public Prosecutions for the Respondent