

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

Criminal Miscellaneous Case No. HAM 67 of 2019  
[High Court Criminal Case No. HAC 037 of 2019]

BETWEEN : SAIMONI PITA KORO

AND : STATE

Counsel : Ms Vulimanainadave for the Applicant  
Mr Niudamu for the State

Date of Hearing : 28 May 2019

Date of Ruling : 11 June 2019

**RULING**

1. The Applicant is seeking bail pending trial. He is indicted for three counts of rape, three counts of sexual assault and two counts of indecent assault.
2. The Respondent does not oppose bail. It was submitted by the Respondent that as long as the Applicant does not reside at Soa Village where the complainant resides, he can be enlarged on bail. The Respondent further states that since this is a recently reported matter there is no guarantee on whether a trial date will be fixed soon.

3. 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.
4. However, section 3(4) of the Bail Act provides that the presumption is displaced if the person has been charged with a domestic violence offence.
5. The complainant is a 15 years old girl and the biological daughter of the Applicant. It is very clear that the Applicant has allegedly committed multiple domestic violence offences and the presumption in favour of granting bail is displaced.
6. 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.
7. The primary consideration in considering bail is the likelihood of Applicant appearing in Court to answer the charges. However, when an offender is charged with domestic violence offences, section 19(2)(d) requires the Court to have regard to the following matters as well, in addition to the general considerations in determining bail;
  - (i) The nature and history of alleged domestic violence by the Accused in respect of the person against whom the alleged

offence has been committed and any other specially affected person;

- (ii) The views of the person against whom the alleged offence has been committed and any other specially affected person about the risk, if any, that the Accused may pose to the safety and well-being of a specially affected person while on bail;
- (iii) Whether a domestic violence restraining order is in effect for the protection of a relevant specially affected person;
- (iv) The likelihood of the Accused person committing a further domestic violence offence while on bail.

8. The Applicant seeks that his personal circumstances be considered in determining bail. He has submitted that his wife has passed away and he has six children. Four of the children are schooling and he is the sole breadwinner in the family. It should be noted that personal circumstances or the difficulties to the family should be looked at in the backdrop of other considerations for bail.

9. I have also considered the suitability of the proposed sureties. One of the proposed sureties is the Applicant's mother and the other proposed surety is the brother in law of the Applicant. The Applicant's mother informed Court that she visits the complainant and the Applicant's other children. Also, she said that the Applicant's children including the complainant lives with the Applicant's brother now. Due to the close relationship of the sureties with the Applicant and the complainant I am not satisfied that the proposed sureties are in a position of control to ensure that the Applicant would not interfere with the complainant.

10. Further I am satisfied that the chances are high for interference with the complainant due to the nature of the relationship between the parties and the vulnerability of the complainant. I have reasons to believe that there is a likelihood of the Applicant committing further domestic violence offences and the safety of the complainant is likely to be put at risk if bail is granted.

11. Therefore, I am of the view that it is not in the interest of justice to grant bail in this matter. The bail application is refused.



**Rangajeeva Wimalasena**  
**Acting Judge**

**Solicitors:**

Office of the Legal Aid Commission for the Applicant

Office of the Director of Public Prosecutions for the Respondent