

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

Criminal Misc. Case No. HAM 173 of 2023

BETWEEN: **VIKAL VANRAJ**

APPLICANT

AND: **THE STATE**

RESPONDENT

Counsel : Mr. M. Kumar for the Applicant.
 : Mr. J. Nasa for the Respondent.

Date of Hearing : 27 July, 2023

Date of Ruling : 27 July, 2023

BAIL VARIATION RULING

BACKGROUND INFORMATION

1. The applicant faces four counts of Rape contrary to section 207 (1), (2) (a), (2) (b) and (2) (c) of the Crimes Act 2009 and one count of Indecent Assault contrary to section 212 (1) of the Crimes Act 2009.

2. On 16th January, 2023 the applicant was granted bail by this court, a condition of bail was that the applicant deposit his passport at the High Court Registry and a stop departure order was effected as well.
3. By Notice of Motion dated 12th July, 2023 the applicant seeks an order that his bail condition be varied to allow him to travel to Australia.
4. The applicant relies on his own affidavit in support sworn on 12th July, 2023 and affidavit in reply sworn on 27th July, 2023 filed herein with relevant annexures.

REASONS FOR SEEKING BAIL VARIATION

5. The applicant in his affidavit deposes that he is a permanent resident of Australia including his wife and son. At the moment his wife and son are in Australia.
6. At the present time the applicant does not have any gainful employment in Fiji and is sustaining himself upon the generosity of others. The applicant wishes to be with his wife and child at the time of his wife's surgery and recovery. The applicant promises to return to Fiji on 12th August by which time his wife would have recovered from the surgery. He is in a position to provide additional sureties and is able to deposit a nominal sum of money to assure the court of his return.
7. In his affidavit in reply the applicant deposes that he has a leasehold property in Fiji which is currently let out under a tenancy agreement situated at Davuilevu, Nasinu. The applicant has also annexed a copy of his wife's medical practitioner's email to the applicant's counsel dated 25th July, 2023 confirming surgery date and the need for a support person to

be with the patient. The applicant has been in Fiji for the past seven months.

RESPONDENT'S SUBMISSION

8. This application is opposed by the State, in response Cpl. 4206 Semi Vuniwai has filed his affidavit in opposition sworn on 25th July, 2023.
9. Cpl. Vuniwai deposes that the applicant has not provided a flight itinerary of when he intends to leave and return to Fiji. The surgery of the applicant's wife is not so serious that there is any need for the applicant to be able to emotionally support his wife by flying to Australia. The applicant is an Australian resident who does not have any strong ties to return to Fiji.
10. The State Counsel on the above basis submits that the applicant should not be allowed to leave Fiji since there is a real likelihood that he will not appear in court to answer the charges laid against him. Being a permanent resident of Australia the chances of him returning to Fiji is very low. There are technological means the applicant can take advantage of to provide emotional support to his wife.

DETERMINATION

11. There is no doubt that the applicant is presumed to be innocent until proven guilty of the offences he is charged with. The application for bail variation has been prompted due to the fact that the applicant's wife is going to undergo a surgery of her toe tomorrow and at this time he wishes to be with his wife and their 4 year old son.

12. The applicant relies on the letter of his wife's doctor namely Dr. Asif Adam Sazzad who confirms that Muni Ashmita is his regular patient who will undergo a surgery in her toe on 28th July, 2023 and thereafter she will require a two weeks rest. According to the doctor the applicant will support the patient and the family during this period. The applicant submits that he has a property in Fiji which he does not intend to abandon. The situation confronting the applicant and his young family is that his wife has to undergo an urgent surgery which will take at least two weeks to heal and all along the applicant wishes to provide moral and emotional support to his wife and at the same time look after his four year old son.
13. There is no doubt that the applicant faces serious allegations and that he is a permanent resident of Australia. The applicant's wife has not mentioned anything about her difficulties in looking after their son and why is it that she requires the presence of her husband. Upon reading the letter of the doctor it is my considered view that the surgery of the applicant's wife cannot be classified as a life threatening condition. The property of the applicant is not a strong compelling factor for the applicant to return to Fiji in light of the serious allegations raised against him with an obvious imprisonment upon conviction. The immediate family members of the applicant are in Australia where the applicant wishes to go.
14. Although the applicant has mentioned that he can provide additional sureties and cash money to secure his return there is no cogent evidence before this court to give any credence to the applicant's assertions. The applicant has not provided any compelling reason that he will leave Australia after two weeks of his wife's surgery. In one breath the applicant deposes in his affidavit that he has no gainful employment in Fiji and he is at the generosity of others and then he changes his tune later in his

affidavit to state that he is able to provide cash deposit for his return does not carry any weight.

CONCLUSION

15. Upon considering the evidence adduced and the submissions made by both counsel this court is not convinced by the reasons given by the applicant for the bail condition variation hence his application is refused. There is nothing in this application which is cogent enough to satisfy this court that the applicant will leave Australia and submit to the jurisdiction of this court in order to answer the charges laid against him. There is a real likelihood that the applicant will not return to stand trial.
16. Finally, in the interest of justice and taking into account the unemployed status of the applicant this court will assign a hearing date in the substantive matter on 29th August, 2023 after the pre trial conference.

 
Sunil Sharma
Judge

At Lautoka

27 July, 2023

Solicitors

Messrs Fazilat Shah Lawyers for the Applicant.

Office of the Director of Public Prosecution for the Respondent.