

IN THE HIGH COURT OF FIJI AT SUVA

MISCELLANEOUS JURISDICTION

Miscellaneous Case No. HAM 396 of 2023

IN THE MATTER of an application for bail pending trial in the case of State vs Pandit David Maharaj Criminal Case No. 329 of 2023 in the High Court of Fiji

BETWEEN: PANDIT DAVID MAHARAJ

APPLICANT

AND: STATE

RESPONDENT

For the Applicant: In person
For the Respondent: Ms. K. Dugan

Date of Hearing: 10th April 2024
Date of Ruling: 16th May 2024

RULING ON BAIL

1. This is the Ruling on the Applicant's bail application filed on the 11th December 2023. This is his third application.
2. He is charged with 4 counts of Rape contrary to section 207 (1) and 2 (b) of the Crimes Act, one count of Sexual Assault contrary to section 210 (1) and 2 (a) of the Crimes Act and one count of Pornographic Activities Involving Juveniles contrary to section 62A (1) (b) of the Juveniles (Amendment) Act 1997.
3. He has entered a plea of Not Guilty and this matter is fixed for Trial from January 13th to 17th 2025.

Grounds for Bail

4. The Applicant submits that he enjoys the presumption in favour of bail. He asks to be on bail so that he can look after his family as he is the sole breadwinner and they rely on him.
5. He is willing to abide by any bail conditions and he offers two sureties, he identified one surety as his brother but he has not identified the second proposed surety.
6. He states that he is not a danger to the community and he has deep ties to the community and to his church congregation.
7. These allegations are still yet to be proven and he is presumed innocent until proven guilty.

The Grounds for Objecting to Bail

8. The application for bail is opposed and the State has filed the affidavit of WPC 7788 Timaleti, the investigating officer in this case.
9. She offers the following grounds for objecting to the application for bail: -
 - (i) The Applicant was arrested and has been in custody since 17th October 2023.
 - (ii) He is charged with 4 counts of Rape, 1 count of Sexual Assault and 1 count of Pornographic Activity Involving Juveniles. The prosecution submits that there is a very strong case against the Applicant.
 - (iii) He is facing serious charges and if found guilty, will be facing a lengthy custodial sentence.

- (iv) He has previous convictions with 3 current PCs, including one for Breach of Bail conditions from 2017. His records are in the name of Lachman Sharma but his fingerprints and other records confirm that he is the same person as Pandit David Maharaj.
- (v) The Applicant had applied to change his name from Lachman Sharma to Pandit David Maharaj on the 28th of July 2023. The amendment was accordingly made on the 31st of August 2023.
- (vi) Given the Applicant's previous conduct of breaching his bail conditions, the State contends that he has defied the authorities in the past and may not return to honour his bail conditions and attend his Trial.
- (vii) He has no other pending matters before any other Court in Fiji.
- (viii) He is currently remanded at the Suva Remand Centre and he can have access to his Trial counsel from Legal Aid to prepare for his Trial.
- (ix) The State will be relying on the direct evidence of the child victim, known to the Applicant himself therefore the potential of interference is high.
- (x) In view of the strength of the prosecution's case, the seriousness of the charges and the likely penalty if convicted, the State prays that the Court refuses the application for bail in the public interest and for the protection of the community.

10. The application for bail was heard on the 10th of April 2024.

Bail Hearing

- 11. The Applicant confirmed that he had changed his name in 2023 as he had converted to the Seventh Day Adventist denomination.
- 12. He has been remanded for 6 months and his family needs him. He will be residing with his brother in Nausori, and he will also be employed by his brother's company.
- 13. He also informed the Court at the hearing that he was ill however he did not provide any evidence on his ailment or on what type of treatment he was receiving.

14. He submits that he will not interfere with the prosecution witnesses and he will attend all of his Court dates and he will answer to the charges against him at the Trial of this matter.
15. The State maintains that the Applicant has failed to demonstrate any substantial change in circumstances that would justify granting him bail notwithstanding that he has already failed in two previous applications.
16. The Trial date has already been fixed and there will be another mention date in November therefore it is not in the interest of justice for the Applicant to be granted bail as the Court cannot be sure that he will return for his Trial.
17. The State therefore submits that the application for bail be refused and the matter ought to take its own course.

Analysis

18. Section 3 of the Bail Act creates a presumption of Bail for any Accused unless “it is not in the interest of justice to grant bail.”
19. Section 18 (1) of the Bail Act stipulates that the person objecting to bail, in this case the State, bears the burden of rebutting the presumption in favour of bail on the following grounds: -

“Refusal of bail

18.-(1) A person making submissions to a court against the presumption in favour of bail must deal with-

- (a) the likelihood of the accused person surrendering to custody and appearing in court;
- (b) the interests of the accused person;
- (c) the public interest and the protection of the community.”

20. In this application there is no evidence provided by the Applicant setting out a material change in his circumstances since bail was last refused. Even if this is a fresh bail application, he has not provided any details of his proposed sureties or details of his address and where he is going to be resident while on bail.
21. He has also confirmed that he has a previous conviction for Breach of Bail that is still in force. He is facing serious charges and penalties therefore there is an incentive to abscond.
22. This matter has already been fixed for Trial and the Applicant is remanded at the Suva Remand Centre where he can instruct his counsel and the Court can be assured that he will be present for his Trial.
23. For those reasons, the Court finds that it is not in the interest of justice that he be granted bail as the Court is not convinced of the likelihood of his returning to Court to answer the charges.

This is the Ruling: -

- 1. The application for bail is refused.**
- 2. There is a right of appeal, or you may ask for review if there is a material change in your circumstances.**



Mr. Justice Usaia Ratuvi
Puisne Judge



*cc: 1. Office of the Director of Public Prosecutions
2. Pandit David Maharaj*

