

IN THE HIGH COURT OF FIJI AT SUVA

CRIMINAL JURISDICTION

Miscellaneous Case No. HAM 259 of 2024

IN THE MATTER of an application for bail
pending Trial at the Suva High Court criminal
case HAC 148 of 2024

Krishneel Ram -v- State

For the Applicant: Mr. Raikanikoda

For the State: Mr. Singh

Date of Bail Hearing: 4th April 2025

Date of Bail Ruling: 22nd April 2025

BAIL RULING

1. This is the bail application filed in this matter.
2. The Applicant filed a Notice of Motion on the 30th January 2025 seeking the following: -
 - (a) An order that the Applicant be admitted to bail pending hearing under section 12 (a) of the Bail Act 2002 upon such terms and conditions as this Honourable Court deems fit and just.
3. The application is supported by the affidavit of Krishneel Ram deposed on the 29th of January 2025 and he has set out the grounds for the application.

The Grounds for the Application

4. The Applicant is charged with 1 count of Assault Causing Actual Bodily Harm contrary to section 212 (1) of the Crimes Act; 1 count of Rape contrary to section 207 of the Crimes Act and 1 count of Breach of Domestic Violence Restraining Order contrary to section 77 (1) of the Domestic Violence Act.
5. The alleged incident took place on the 6th day of October 2023 and these charges were laid on the 23rd of October 2023 after one month 14 days.
6. He cooperated with the Police though he was arrested on a bench warrant for not attending Court. It was not his intention to evade Police, and he was wrongly advised by Police on the status of his matter on its last call date in Nasinu Court.
7. He has now spent 10 months in remand and his four previous Bail applications were rejected and denied by the Court. He has now lodged his 5th application because there are new and changed circumstances.
8. He has 3 children, one in Class 5 attending Class 6 this year, one in Class 1, attending Class 2 this year and the third one will be attending kindergarten this year.
9. He contends that the children's mother has already spent the government assistance for the children, and she has not bought any stationeries, uniforms, shoes, bags etc.
10. He also contends that when the matter was transferred to the High Court, his wife wrote to withdraw her complaint however the office of DPP has continued to maintain this action despite her express wishes. He further claims that she is willing to come to Court and confirm this withdrawal.
11. He has included school reports from the eldest son's school indicating that his results are deteriorating and his wife is failing to properly supervise and monitor their studies.

12. He is seeking bail to look after his children, nurturing them and guiding them and supporting them in their daily lives. This has not been possible because he is in remand.
13. He is also seeking bail as the Remand Centre is full.
14. He offers the following sureties: -
 - (a) Mr. Avikash Sen, mechanic of Narere Stage 1, phone number 9581154.
 - (b) Mr. Ravneel Lal, Building contractor of Narere Stage 1, phone number 9600400. He is the Applicant's uncle
15. He therefore submits that the bail application should be granted, and he be allowed to proceed on bail and he promises to attend all of his Court dates and his Trial.
16. The application for bail is opposed and the State has filed the affidavit of WDC 3723 Reshmi opposing the application.

The opposition to Bail

17. WDC 3723 Reshmi, based at the Nasinu Police Station submits the following grounds for the refusal of bail: -
 - (i) She has served with the Fiji Police for the past 19 years and is currently based at Nasinu Police Station. She is familiar with the facts of this case as she is the Investigative Officer for this case.
 - (ii) On the 9th of October 2023 a report was received from Rakeshni Lata Prasad (the complainant) at the Nasinu Police Station regarding an allegation of breach of a DVRO by her husband Mr. Krishneel Ram, the Applicant.
 - (iii) The report lodged at Nasinu Police Station was that the Applicant entered the complainant's house despite there being a DVRO (No. 271/23) in place. The Applicant then asked the complainant to have sexual intercourse, but she refused.

- (iv) The Applicant then punched the complainant on her face and slapped her. He then pushed her on the bed and forcefully had sexual intercourse with her.
- (v) The Applicant was arrested, interviewed under caution and charged on the 23rd of October 2023 and he was first produced in Nasinu Magistrate's Court on the 27th of October 2023 and the matter was then sent up to the High Court.
- (vi) In his record of interview, the Applicant had confirmed that there was a DVRO in place and he had met the complainant. He also made admissions that he had sexual intercourse with the complainant; however, he claimed that it was consensual.
- (vii) When the matter was first called in the High Court on the 3rd of November 2023, the Applicant was not present, and the matter was adjourned to the 27th of November 2023.
- (viii) On the 27th of November 2023, the Accused was still not present, and the Court gave directions for the Information and Disclosure to be served on the Applicant. The matter was adjourned to the 8th of December 2023.
- (ix) When the Applicant was still not present on the 8th of December, a bench warrant was issued for his arrest. The warrant was pending until 15th April 2024 when he was arrested, and he was produced in Court on the 14th of May 2024.
- (x) When he was arrested by the Police and asked why he had not attended his Court dates. He informed the Police that he had secured new employment, and he had been supporting his children financially hence he could not attend Court.
- (xi) He initially filed a bail application however this was withdrawn by counsel from Legal Aid. The Applicant then withdrew his application, and he also withdrew instructions from Legal Aid and engaged Messrs. Raikanikoda Law. His new counsel then filed the last 3 applications before the Court.
- (xii) With respect to the application, the State confirms that the Applicant is a first offender. He now faces 3 counts – Assault with intent to commit Rape, 1 count of Rape, and 1 count of Breach of Domestic Violence Restraining Order.

- (xiii) These charges are very serious in nature and the offence of Rape carries a maximum term of life imprisonment, Assault carries a maximum sentence of 5 years imprisonment and breach of a domestic violence restraining order carries a fine of \$1, 000 and/or a term of imprisonment of 12 months.
- (xiv) Considering the applicant's history of not attending Court since the matter was transferred to the High Court, the applicant has shown that he cannot be trusted to be enlarged on bail.
- (xv) This is the 5th application for bail filed by the applicant and in the earlier applications, he offered the same reasons, to look after his children. The 4th application was refused because he had not been able to demonstrate any significant change in his personal circumstances.
- (xvi) The Applicant's wife has also submitted a statement dated 17th February 2025, confirming that she had now moved on and settled with another man. He was fully supporting her and the children, and they were supervising the children in their schoolwork. Her own family also assisted her in looking after the children.
- (xvii) She confirmed that the Applicant was not paying maintenance even before he was charged, and he did not support the children. She used to live in fear of him because he would harass her and come to her house without permission. She now lives without fear and opposes his application for bail.
- (xviii) The State submits that there is a domestic relationship between the applicant and the complainant as they are husband and wife.
- (xix) The allegations against the applicant are serious in nature and he has an incentive to abscond, as the penalties on each count carry significant penalties.
- (xx) He also has a history of not attending his Court dates therefore he cannot be trusted to abide by his bail conditions.
- (xxi) For those reasons, the State submits that the bail application should be refused.

18. The Applicant filed an affidavit in reply on the 3rd of April 2025, reiterating his grounds for the bail application.

19. The matter was then adjourned for bail hearing on the 4th of April 2025. The parties agreed that they would rely on their documents filed in Court.

Analysis

20. Section 13 (1) (h) of the Constitution – the rights of arrested, detained persons, provides as follows: -

“An arrested or detained person has the right to be released on reasonable terms and conditions, pending a charge or trial, unless the interests of justice otherwise require;”

21. The current application is made pursuant to section 12 (a) of the Bail Act 2002.

22. The applicant is a first offender therefore he would normally be entitled to bail as of right. He however is charged with a domestic violence offence therefore the presumption in his favour is displaced.

23. This is his 5th application for bail, and he relies on a change in his personal circumstances to justify the granting of bail for him.

24. He has not provided any evidence in support of his contention that his wife, the complainant, has now withdrawn her complaint. The State, in answer, has produced a statement from the complainant and far from withdrawing the complaint, she is determined to have the charge proceed and states that she still fears the Accused and has no confidence that he will abide by any bail conditions if he is released on bail.

25. The Accused has attached evidence from the children’s schools and submits that as the basis for granting him bail to take over the care of the children and to guide them in their schoolwork.

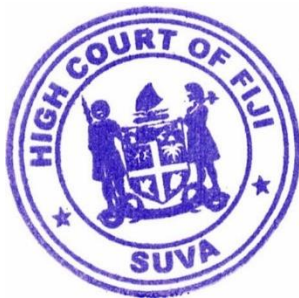
26. Contrasted with this is the Court record. He has only appeared in the High Court under arrest in May 2024, while the transfer order was made in the year 27th October 2023.


27. The applicant has not satisfied this Court that he will return to Court to answer his charges. The complainant is his wife, who was protected by a DVRO, and it is alleged that he breached this DVRO when he assaulted her and then allegedly raped her.
28. The delay in these proceedings is largely due to the applicant's initial absence and the bench warrant that was issued for his arrest.
29. The Court is not satisfied that the Applicant has demonstrated that there is a material change in his personal circumstances to justify the grant of bail.
30. After considering the above, the Court finds that it is not in the interest of justice to grant bail to the applicant.

Krishneel Ram this is the ruling on Bail: -

- 1. The Application for Bail pending Trial is refused.**
- 2. The parties will attend to preparing this matter for Trial**

There is a right of appeal or review





Mr. Justice U. Ratuveli
Puisne Judge

cc: - Office of the Director of Public Prosecutions
- Raikanikoda & Associates