

IN THE HIGH COURT OF FIJI
AT SUVA
APPELLATE JURISDICTION

Criminal Appeal No: HAA008 of 2013

BETWEEN : **THE STATE**
Appellant

AND : **RAKESH LAL**
Respondent

BEFORE : **HON. MR. JUSTICE MADIGAN**

Counsel : Mr. J. Niudamu for State
Mr. J. Reddy (with Mr. I. Samad) for Respondent

Date of hearing : 22 February, 12 April, 29 April, 10 May 2013
Date of ruling : 16 May 2013

RULING

[1] On the 6th day of December 2012 the respondent was charged in the Magistrates' Court in Suva with one offence of breach of a domestic violence restraining order and one further offence of breach of bail. He had been earlier charged with two counts of act intended to cause grievous harm, the victims said to be his wife and his son. It was as a result of those two charges that a domestic violence restraining order was issued against him and that he was released on bail with strict conditions.

[2] Pursuant to the new charges of bail and breach of the domestic violence restraining order, the learned Magistrate released the respondent on bail on the 7th February 2013, despite the strong objections of the State.

[3] There is of course a presumption in favour of bail but that presumption can be rebutted by the State for the following reasons:

- 1) If the person seeking bail has previously breached a bail undertaking or bail condition; or
- 2) If the person has been charged with a domestic violence offence.

There is a third reason for denying the presumption (awaiting appeal against conviction) but that is not relevant to these circumstances.

[4] It can be seen therefore that in the present proceedings before the Magistrate, the respondent does not enjoy the presumption of bail for two of the three reasons that a presumption is to be rebutted. This should carry a great deal of weight in determining whether the accused should be admitted to bail or not.

[5] Furthermore, an amendment to the Bail Act, imported into that Act on the coming into effect of the Domestic Violence Decree stipulates by section 19 (1)(c) that an accused person must be granted bail unless –

“(d) the accused person is charged with a domestic violence offence and the safety of a specifically affected person is likely to be put at risk if bail is granted.”

[6] So not only is the presumption in favour of bail displaced for **two** reasons, but in addition the terms of section 19 (1)(c) requires the Court to consider the safety of the victim of Domestic Violence.

- [7] This accused has a previous record of two recognizable previous convictions, both for offences of violence. He has two pending cases in the Court below for domestic violence offences and he has been charged with breach of bail and breach of a domestic violence order.
- [8] An accused with such a history of violence and facing charges of defying authority should never ever be admitted to bail. The risks of his committing further domestic violence offences, and the risk of breaching further bail conditions is too high.
- [9] The order by the learned Magistrate to grant bail to this respondent is revoked. The respondent will remain in custody until the end of his trial on all matters he faces in the Court below.

Paul K. Madigan
JUDGE

At Suva
16 May 2013