

**IN THE HIGH COURT OF FIJI AT SUVA**  
**(CRIMINAL JURISDICTION)**

Criminal Miscellaneous Case No.: 151 of 2015

**BETWEEN** : **MATORINO MADOGO**

**Applicant**

**AND** : **THE STATE**

**Respondent**

**Counsel** : Ms. T. Kean for Applicant  
Ms. S. Kant for Respondent

**Date of Ruling** : 23<sup>rd</sup> October 2015

**RULING**

1. The Applicant is applying for bail pending trial in HAC 304 of 2015. He is charged with two counts of Rape under section 207(1) of the Crimes Decree 2009. The Respondent objects to this application.
2. Section 3(1) of the Bail Act 2002 provides that every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted.
3. Section 3(3) of the Bail Act provides thus;

*“There is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption.”*

4. In terms of section 3(4), the presumption in favour of the granting of bail is displaced where;
  - a) The person seeking bail has previously breached a bail undertaking or bail condition; or
  - b) The person has been convicted and has appealed against the conviction.
  
5. This is not a case where the Respondent is objecting for bail on the basis of a previous violation of a bail undertaking or a bail condition by the Applicant and this is an application for bail pending trial. The presumption in favour of the granting of bail is therefore not displaced by virtue of section 3(4) of the Bail Act and the Respondent is required to rebut the said presumption in line with the provisions of section 18(1) of the Bail Act in order to justify the refusal of bail.
  
6. Section 18(1) provides that;

*“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.”*
  
7. I turn now to examine the grounds of objection to this application. The Respondent submits that certain information provided by the Applicant in his bail application namely, the fact that he is the sole breadwinner of his family and the fact that his two daughters were living with him at the time the bail application was made are incorrect. The Respondent states that the court should draw an inference that the Applicant will not obey the bail conditions if bail is granted, based on this alleged providing of incorrect information. According to the Counsel for the Respondent, this is the strongest ground of objection in this matter. In response to this ground, Counsel for the Applicant submitted that the Applicant might have misunderstood the meaning of the term ‘sole breadwinner’ and the Applicant’s children did live with him until he was arrested.

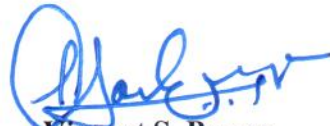
8. The material available before this court is not sufficient to make a finding that the Applicant has provided false information. The Respondent cannot rebut the presumption in favour of granting bail merely by making an allegation based on hearsay evidence that the Applicant has provided incorrect information in his bail application.
9. The Respondent also says that the Applicant is charged with a serious offence. Rape is indeed a serious offence. However, the fact that the Applicant is charged with a serious offence alone does not justify the refusal of bail. It is pertinent to note that the Respondent has failed to provide any evidence on the circumstances, nature and the seriousness of the offence and on the strength of the prosecution case.
10. All in all, I hold that the Respondent has failed to rebut the presumption in favour of granting of bail to the Applicant.
11. Therefore, this application for bail pending trial is allowed and the Applicant is hereby granted bail subject to the following conditions.

The Applicant should;

- a) sign a personal surety bond of \$1000;
- b) appear in case No. HAC 304 of 2015 on every court date;
- c) not commit any offence whilst on bail;
- d) provide clear details of his residential address and reside at that address until the conclusion of the case, HAC 304 of 2015;
- e) not change the aforementioned address provided to court without the leave of the court;
- f) not interfere with the complainant or any other prosecution witness;
- g) not apply for any travel document and not leave the jurisdiction until the conclusion of the case;
- h) report to Nabua Police Station on every other Friday between 6.00am and 6.00pm; and

- i) provide two sureties and each surety to sign a bond of \$1000 to ensure that the Applicant complies with his bail undertaking.



  
Vincent S. Perera  
JUDGE

**Solicitor for the State** : **Office of the Director of Public Prosecution, Suva.**  
**Solicitor for the Accused** : **Legal Aid Commission, Suva**