

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 objections to this application. The grounds of objection mounted by the Respondent are;
 - a) The Applicant has provided incorrect information in the bail application,
 - b) The Applicant has no dependents and therefore there is no reason for the applicant to remain in one address, and
 - c) Applicant is charged with two counts of rape which is a serious offence.

8. According to the Respondent the Applicant is not the sole breadwinner of his family though in the bail application the Applicant had stated that he is. The Respondent submits that the court should draw an inference that the Applicant will not obey the bail conditions if bail is granted, based on this providing of incorrect information. In response

to this issue, Counsel for the Applicant submitted that the Applicant is looking after his mother and himself.

9. I note that in answer to question 13 of the bail application, the Applicant has stated that he is the sole breadwinner of his family. The Counsel for the Applicant also stated that the Applicant is looking after his mother. However, in the same application the Applicant has indicated that he does not have dependents (question 14), he was not employed before going into prison (question 16) and he is not self-employed (question 20). Accordingly, I find that there is inconsistent information in the bail application.
10. The last paragraph of the bail application (item 32) reads thus;

“I confirm that the contents of this form are true and accurate. I understand if I have deliberately misinformed the Court herein, I may have my bail cancelled by the Court.”
11. According to the above paragraph it is manifest that an applicant’s bail is liable to be cancelled if it is later found that the applicant had deliberately provided incorrect information in the bail application. Therefore, if the court finds that incorrect information is provided in a bail application, in my view, it would not be in order to consider granting of bail based on that application.
12. Hence, I hold that this bail application is defective and I am not inclined to consider granting relief based on a defective application.
13. This application is accordingly dismissed.



Solicitor for the State :
Solicitor for the Accused :

Vinsent S. Perera
JUDGE

Office of the Director of Public Prosecution, Suva.
Legal Aid Commission, Suva