



2. The Applicant is remanded in custody since 6<sup>th</sup> January, 2017. This is his first bail Application.
3. Applicant is the biological father of the victim.
4. The Applicant advances two grounds for consideration of his bail; his personal circumstances namely, that he is the sole breadwinner of the family with school going children and that the remand centre he is being detained is over crowded.
5. The State filed its response along with the affidavit of WDC Tagayawa, the Investigating Officer of the substantive case. The State is objecting to bail on the grounds stated in the affidavit; namely that, if bail is granted, there is a high likelihood of interference with the victim who is the biological daughter of the Applicant. The State also refutes the claim that the children of the Applicant are dependent on the Applicant.
6. This Court on numerous occasions has held that difficult familial conditions or personal circumstances per se do not add strength to a bail application. Offenders should be aware of the situation they would face upon a commission of an offence and think of their family before it is too late. The facts that the Applicant is the sole breadwinner of the family and that he has to support his school going children are not appealing to me as valid grounds for bail.
7. There is no evidence before this Court that the Applicant is detained in an overcrowded remand centre.
8. The main concern of the State is possible interference with the victim. To substantiate the claim of witness interference, the Respondent has cited two incidents. In the first incident, a letter purportedly written by the victim has been received by the DDP's office at Ba claiming that the entire allegation against the Applicant was fabricated. Upon receiving this letter, the Investigating Officer, in a fact finding exercise, had recorded a statement from the victim on

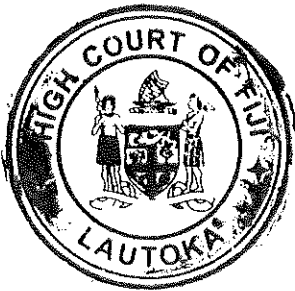
10<sup>th</sup> February, 2017 wherein the victim had confirmed the allegation and stated that she was reprimanded by Applicant's parents and forced to write the letter. At that time, the Applicant was in police custody.


9. This incident does not provide conclusive evidence that the Applicant was involved in the alleged interference with the victim.
  
10. According to the second incident, the Applicant had allegedly taken the victim to his parent's house where she had been asked to write a letter claiming that the entire allegation was fabricated. According to Investigating Officer, this incident had come to light when she had recorded a statement from the victim on 4<sup>th</sup> January, 2017, that was before the arrest of the Applicant. However, the Investigating Officer had not found such a letter. The Applicant denies the allegation.
  
11. There cannot be any doubt, given the domestic relationship the Applicant has with the victim, that there is high likelihood of interference with the victim if bail is granted to the Applicant. However, the State concedes that, after the arrest of the Applicant, the victim has been relocated and taken into the care of her maternal grandmother in Naiborebore. They also confirm that the victim is currently engaged in an employment and fully supported by her maternal family. Applicant says that Naiborebore is located 180-200 kms away from her place of residence in Tailevu.
  
12. Before coming to a decision to deprive personal liberty of a person, interests of public and interests of the Accused must be rightly balanced. In balancing competing interests, courts must be mindful of the primary consideration in determining bail; that is the likelihood of the accused person surrendering to custody and appearing in court to face his or her trial.

13. Having given due consideration to the above criteria, Courts, in determining bail, must be satisfied that the deprivation of personal liberty is the only option available and resorting to that option is not disproportionate to the objective that is to be achieved thereby. Undue interference with witnesses and the administration of justice process, no doubt will offend the public interests. If the concerns of public interests can be addressed by imposing stringent bail conditions, courts must not, in my opinion, resort to curtail personal liberty.
  
14. Since the victim who is now an adult is no longer in the care and custody of the Applicant, and is relocated in a place quite distanced from the Applicant's residence. The risk of interference can be minimized by imposing stringent bail conditions.
  
15. Furthermore, when deciding whether to grant bail to an accused person, Courts must take into account the time the accused may have to spend in custody before trial if bail is not granted [ Section 17.-(1) of the Bail Act]. Information in the substantive matter is yet to be filed and disclosures are yet to be served on the Defence. My trial diary is overbooked. Under these circumstances, a trial in this year is hardly possible.
  
16. The proposed purpose to be achieved by restricting Applicant's liberty is avoidance of undue interference with administration of justice process. Risk of interference (with witnesses) can be avoided by imposing stringent bail conditions. Applicant has already indicated to Court that he will keep away from the victim and witnesses. Having considered the above mentioned factors, I am of the view that imposition of strict bail conditions is sufficient to guard against interference with the victim.
  
17. For the reasons given, application for bail pending trial is allowed.

18. Applicant is granted bail on following bail conditions.

- [1]. Personal bail bond for \$1000 (non-cash).
- [2]. Surety bail bond for \$1000 with two sureties (non-cash).
- [3]. An interim DVRO is issued with a non molestation order and to be strictly complied with.
- [4]. Reporting to Ba Police Station on last Saturday of the month between 8 am. and 4 p.m.
- [5]. Not to interfere with the victim or witnesses. Applicant must refrain from having any contact with the victim directly or indirectly.



  
**Aruna Aluthge**  
Judge

**At Lautoka**

**16<sup>th</sup> March, 2017**

**Solicitors: Office of the Legal Aid Commission for Applicant**  
**Office of the Director of Public Prosecution for the Respondent**