

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS NO. HAM 183 of 2018
[Criminal Case No. 281 of 2018]

BETWEEN : **MOHAMMED YUNUSH**

AND : **STATE**

Counsel : **Mr D Sharma & Ms N Choo for the Accused**
Ms S Sharma for the State

Date of Hearing : **30 July 2018**

Date of Ruling : **30 July 2018**

RULING

- [1] The Accused seeks bail pending trial. He is charged with one count of rape contrary to section 207(1)(a) & (c) of the Crimes Act. The Director of Public Prosecutions is yet to file the Information.
- [2] The Accused has been in custody since he was arrested on 29 June 2018. His application for bail was refused by the Magistrates' Court. The case was transferred to the High Court, rape being an indictable offence.
- [3] The application before this Court is a fresh application for bail. The State does not oppose granting of bail.

- [4] The decision to grant or refuse bail to an accused is a matter of discretion for the courts. That discretion is exercised having regard to well settled principles and factors relevant to bail determination. Section 3(1) of the Bail Act 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”. Also there is a presumption in favour of the grant of bail to an accused but a person who opposes the granting of bail may seek to rebut the presumption. The presumption is displaced if the accused has previously breached a bail undertaking or condition or has been convicted and has appealed against the conviction.
- [5] The primary consideration in deciding whether to grant bail is the likelihood of the accused appearing in court to answer the charge laid against him. The court must also take into account the time the accused may have to spend in custody before trial if bail is not granted. In the present case, the trial is unlikely to be heard until mid 2019.
- [6] Other factors to be considered are provided by section 19 of the Bail Act. Written reasons are required if bail is refused (s 18 (2)).
- [7] The charge of rape is indeed serious. The maximum penalty prescribed for rape is life imprisonment. If convicted, prison sentence is inevitable. The complainant is an adult female and a relative of the accused. She has given a detailed account of the allegation in her police statement.
- [8] The incident allegedly occurred on 28 June 2018 at the complainant’s home. The accused apparently was staying overnight at the complainant’s home after attending an evening function in Suva. Otherwise, the Accused’s ordinary place of residence is in Nadi.

- [9] The Accused is 66 years old. He is a dentist by profession and runs a private dental clinic in Nadi.
- [10] His business and community ties in Fiji are strong. He is a person with previous good character and will defend the charge.
- [11] Given his strong business and community ties, I am satisfied that the Accused will turn up in court for his trial if released on bail. He is not a flight risk. The proposed sureties are acceptable to the court.
- [12] Any concerns regarding interference with the complainant can be addressed by strict bail conditions. There is an interim DVRO with standard no contact and non-molestation conditions issued against the Accused in order to protect the complainant.
- [13] Bail is granted on the following conditions:
- (1) The Accused is to post a cash bail of \$10,000.00 at the High Court Criminal Registry, Suva.
 - (2) The Accused's two proposed sureties is to sign a bail bond of \$10,000.00 each.
 - (3) The Accused is to reside at Navo Road, Malolo, Nadi and not to change that address without the leave of the High Court.
 - (4) The Accused must surrender his passport at the High Court Criminal Registry, Suva within 24 hours and must not obtain any further travelling documents. A stop departure order is issued.
 - (5) The Accused must not contact or interfere, directly or indirectly, with the complainant or any other prosecution witnesses.
 - (6) The Accused must report to Nadi Police Station on every Fridays between 6am – 6pm.
 - (7) The Accused must attend all court hearings.

DC

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Hon. Mr Justice Daniel Goundar

Solicitors:

R. Patel lawyers for the Accused Person
Office of the Director of Public Prosecutions for the State

