

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

MISCELLANEOUS CASE NO. HAM 278 OF 2018

BETWEEN: **RAJIV KRISHAN PADYACHI** **APPLICANT**

A N D: **THE STATE** **RESPONDENT**

Counsel: Mr. G. O’Driscoll for the Applicant
 Mr. T. Tuenuku for the State

Date of Hearing: 02nd October 2018

Date of Ruling: 03rd October 2018

BAIL RULING

1. The Applicant has been charged in the Magistrate’s Court in Nasinu for one count of Attempted Murder on the 17th of September 2018. The prosecution alleges that the Applicant had attempted to murder his girl-friend on the 15th of September 2018. Having taken into consideration the nature of the relationship between the Applicant and the Complainant, the learned Magistrate has granted an Interim Domestic Violence Restraining Order with the standard non-molestation conditions and non-contact orders. The matter was then transferred to High Court.

2. The Applicant files this application for bail in the High Court on the 19th of September 2018. The application is supported by an affidavit of the Applicant, stating the grounds for this application for bail.
3. The Respondent filed an affidavit of DC 5037 Farasiko, stating the objections of the Respondent for this application for bail. Subsequently, the oral submissions of the counsels for the parties were heard on the 2nd of October 2018. Having carefully considered the respective affidavits of the parties and their oral submissions, I now proceed to pronounce the ruling as follows.
4. Pursuant to Section 3 (1) of the Bail Act, every accused has a right to be released on bail unless it is not in the interest of justice. Furthermore, the Section 3 (3) of the Bail Act states that:

“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.”

5. Section 3 (4) of the Bail Act has stipulated the instances where the presumption in favour of the granting of bail is displaced, where it states that:

- i) The person seeking bail has previously breached a bail undertaking of bail condition;*
- ii) The person has been convicted and has appealed against the conviction.*
- iii) The person has been charged with a domestic violence offence.*

6. In this case, the complainant was in a relationship with the Applicant. Therefore their relationship comes within the definition of domestic relationship as defined under Section 2 of the Domestic Violence Act, making the charge that the Applicant has been charged with in the Magistrates' Court as a domestic violence offence. Accordingly, the presumption in favour of the granting of bail has been displaced pursuant to Section 3 (4) (c) of the Bail Act. Therefore, the Respondent, who is objecting for the bail, has no onus to rebut the said

presumption. It is important to note that the displaced of the presumption in favour of the granting of bail does not mean that the Applicant's right to be released on bail as stated under Section 3 (1) of the Bail Act, has also been displaced. Under such circumstances, the court must consider whether it would serve the interest of justice, if the Applicant is released on bail.

7. Section 19 (1) of the Bail Act states that:

- i) *An Accused person must be granted bail unless in the opinion of the police officer or the court ,as the case may be;*
 - a) *The accused person is unlikely to surrender to custody and appear in court to answer the charges laid.*
 - b) *The interest of the accused person will not be served through the granting of bail,*
 - c) *Granting bail to the accused would endanger the public interest or make the protection of the community more difficult,*
 - d) *The accused person is charged with a domestic violence offence and the safety of a specially affected person is likely to be put at risk if bail is granted taking into account the condition that could be applied if bail were granted.*

8. The main objection of the Respondent is the safety of the Complainant if the Applicant is granted bail. The Respondent contends that the father of the Applicant had called the Complainant, requesting her to withdraw this charge. Section 19 (2) (d) of the Bail Act has stipulated the factors that the court could take into consideration in determining the safety of the complainant, where it states that:


As regards the safety of the specially affected person when the accused is charged with a domestic violence offence-

- i) *The nature and history of alleged domestic violence by the accused in respect of the person against whom the alleged offence has been committed and any other specially affected person,*
- ii) *The views of the person against whom the alleged offence has been committed and any other specially affected person about the risk, if any, that the accused may pose to the safety and well-being of a specially affected person while on bail,*
- iii) *Whether a domestic violence restraining order is in effect for the protection of a relevant specially affected person,*
- iv) *The likelihood of the accused person committing a further domestic violence offence while on bail.*

9. The Respondent tendered a letter written by the Complainant, addressing to the Director of Public Prosecution as an annexure to the affidavit of DC Farasiko. In that letter, the complainant has expressed her concern and fear of her life if the Applicant is granted bail. Her fear and concern are based upon the fact that the Applicant works very close to the residence of the complainant at Vatuwaqa. Apart from that, the Complainant had lodged a report to the police on the 17th of September 2018, complaining that the father of the Applicant had requested her to withdraw the complaint. This alleged telephone conversation had taken place on the same day where the learned Magistrate issued an Interim Domestic Violence Order. On the same day, the Complainant had made another report against the Applicant's ex- girl-friend as well. The learned counsel for the respondent stated in the court that the police has not recorded any statement so far in regards to these complaints.
10. The Applicant in his affidavit has deposed that he would like to move and stay in Nadi until the disposal of the substantive matter. He has also proposed two sureties based in Nadi, if the court is ordered as such. The learned counsel for the Applicant in his oral submissions stated that the Applicant can still continue his employment from Nadi, if the court is ordered him to move to Nadi.

11. Taking into consideration that the learned Magistrate has already granted an Interim Domestic Violence Order with standard non molestation and non-contact conditions, and the possibility of the Applicant to move to Nadi, I find imposing of strict bail conditions would be able to compensate the possible risk that the Complainant is contemplating if the Applicant is granted bail.
12. The Respondent further objected on the ground of flight risk. However, the learned counsel for the Respondent specially conceded that the Applicant is not a holder of any valid Fijian Passport. The fact that the Applicant has some relatives living in overseas could not be taken into consideration alone in order to form a conclusion of flight risk when the Applicant has no valid Fijian Passport.
13. Having taken into consideration the facts discussed above, I grant the Applicant bail on the following conditions:
- i) \$1000 bail bond with two sureties,
 - ii) Not to interfere with the witnesses of the prosecution,
 - iii) Not to re-offend,
 - iv) To reside at Nawaicoba, Nadi until the disposal of the substantive matter,
 - v) To report to Nadi Police Station on every Tuesdays and Saturdays between 6 am to 6 p.m.
 - vi) Not to travel out of Fiji Islands without the prior approval of the Court,




R.D.R.T. Rajasinghe
Judge

At Suva
03rd October 2018

Solicitors
O'Driscoll & Co. for the Applicant.
Office of the Director of Public Prosecutions for the State.