

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**[CRIMINAL JURISDICTION]**

**Criminal Miscellaneous Case No. HAM 322 & 382 of 2018**

**BETWEEN** : MELI KENAWAI

**AND** : STATE

**Counsel** : Ms S Daunivesi for the Accused  
Ms S Sharma for the State

**Dates of Hearing** : 19 March 2019

**Date of Ruling** : 27 March 2019

**RULING**

- [1] The Accused seeks bail pending trial. He is charged with rape of two teenage boys. The State opposes the granting of bail saying the Accused is likely to interfere with the complainants if released on bail.
- [2] The bail principles are governed by the common law and the Bail Act 2002. I am mindful of the presumption in favour of the granting of bail and the presumption of innocence.
- [3] The presumption of innocence fails if it is not in the interests of justice that bail should be granted. If an Accused has previously breached a bail undertaking or condition, then the presumption in favour of the granting of bail fails. There is no history of the Accused absconding bail and therefore the presumption in favour of the granting of bail applies, unless it is not in the interests of justice that the Accused should be granted bail.

- [4] The primary consideration is whether the Accused will turn up for his trial. Other considerations are whether it is not in the interests of the Accused to be released on bail or whether releasing the Accused on bail would endanger the public interest or make the protection of the community more difficult.
- [5] The Accused is a single man. He is in his mid-twenties. He was employed by the Courts Fiji Limited as a driver and technician before he was remanded in custody in this matter. He has been in custody on remand since October 2018. He has no recorded history of sexual offences. This case is his first encounter with the criminal justice system.
- [6] The two complainants are not related to the Accused. The complainants attended the church pastored by the Accused's father. The Accused allegedly committed the offences when the complainants came for a visit to the Accused's home. After the incidents were reported, the complainants left the church. There is some suggestion that the Accused accompanied his mother to seek forgiveness from one of the complainants. The complainant's father refused to accept the apology.
- [7] The two proposed sureties are the Accused's father and a church member. Both sureties have a good standing in the community and have authority over the Accused. The State objects to the father being a surety because he command authority as the pastor of the church and is likely to interfere with the complainants. I am not convinced that the father of the Accused is an unsuitable surety. Firstly, there is no evidence that the father of the Accused has made any attempt to interfere with the complainants. Secondly, the attempt made by the mother of the Accused to seek forgiveness was rejected by the complainant's father. Thirdly, the complainants are no longer members of the church and are not in contact with the Accused or his family.
- [8] I am mindful that the charges are serious, and on conviction a prison sentence is inevitable. But the prosecution case is solely based upon the allegations of the complainants which according to the Accused are fabricated. The veracity of the allegations can only be tested at the trial.

[9] At this stage, I am not convinced that the Accused will not turn up for his trial. If released on bail, the risk of interference with the complainants is remote.

[10] I grant bail on the following conditions:

- (1) The two proposed sureties sign a bail bond of \$500.00 each.
- (2) The Accused is to reside at a fixed address and not to change that address without the leave of the Court.
- (3) The Accused must remain on good behaviour.
- (4) The Accused must not interfere with the complainants or any other prosecution witnesses.
- (5) The Accused must not obtain any travelling documents.
- (6) The Accused must report to Nasinu Police Station on every Saturdays between 6am and 6pm.
- (7) The Accused must attend all court hearings.



A handwritten signature in blue ink, consisting of stylized initials "DG" followed by a horizontal line.

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**Hon. Mr Justice Daniel Goundar**

**Solicitors:**

Legal Aid Commission for the Accused  
Office of the Director of Public Prosecutions for the State