

IN THE HIGH COURT OF FIJI
AT LAUTOKA
CRIMINAL JURISDICTION

CRIMINAL MISCELLANEOUS NO. HAM 140 OF 2019
[High Court Criminal Case No. HAC NO. 008 of 2019]

BETWEEN : **ROBERT WILLIAM STOMAN**

AND : **STATE**

Counsel : **Mr I Khan for Accused**
: **Ms P Lata for State**

Date of Hearing : **3rd July 2019**

Date of Ruling : **6th September 2019**

RULING

- [1] This is a second application for bail. The first application was refused on 14 March 2019 by Wimalasena J. In that ruling the court found that the Accused posed a flight risk and that it was not in the interests of justice to release him on bail.
- [2] The Accused is charged with rape and sexual assault of a 6-year old female complainant. He is a foreigner and a family friend of the complainant's parents. The alleged incidents occurred when the Accused was visiting Fiji. He is an Australian citizen, retired and 73 years old. He seeks bail on the following grounds:
- There is an inordinate delay in fixing the case for trial.
 - There are no reasons given for the delay in reporting the alleged abuse.
 - Medical report of the complainant does not support the alleged sexual abuse.
 - The prosecution case is weak.
 - Mother of the complainant has given a different account to the Accused's son.

- The Accused was detained for more than 48 hours before charge.
- The Accused is willing to post cash bail of \$10,000.00.
- The Accused is willing to surrender his passport and reside at Cathay Hotel opposite the Court premises.
- The Accused is elderly and a person with previous good character.
- The Accused is willing to provide suitable sureties.

[3] Section 14(1) of the Bail Act (the Act) provides for numerous applications for bail. But, the court has discretion to refuse to entertain an application that is frivolous or vexatious pursuant to section 14(2) of the Act. Section 30 (7) of the Act states:

A court which has power to review a bail determination, or hear a fresh application under section 14(1), may, if not satisfied that there are special facts or circumstances, that justify a review, or the making of a fresh application, refuse to hear review or application.

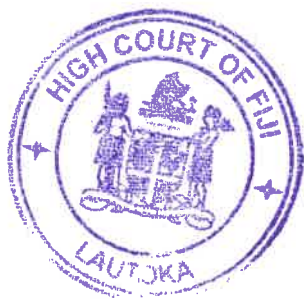
[4] The test for a subsequent application for bail after it had been refused is more stringent. The test is whether there are special facts or circumstances to revisit the earlier decision refusing bail. The court will reconsider granting bail after it was initially refused only if there is change in facts or circumstances that are exceptional or unusual.

[5] Recently, this court said in *Ho v State Criminal Miscellaneous No. HAM 146 of 2019* (23 August 2019) at paragraph 8:

The Bail Act has not defined the phrase ‘special facts or circumstances’ but has left it to the courts to decide on case by case basis. The word ‘special’ has been given the meaning exceptional or unusual in a number of cases. For the facts to be special they must be “peculiar to the particular case which set it apart from other cases” (*Lyon v Wilcox* [1994] 3 NZLR 422, 431 (CA), following the Full Court in *Re M* [1993] NZFLR 74). For circumstances to be special they must be exceptional, abnormal or unusual (*Crabtree v Hinchliffe (Inspector of Taxes)* [1971] 3 All ER 967,976 (Lord Reid), 983 (Viscount Dilhorne)).

[6] The facts or circumstances relied upon by the Accused are not peculiar to his case only. Most of the grounds raised by the Accused in his second application for bail are evidentiary issues for trial. Once a determination has been made that the Accused is a flight risk then this Court has no power to upset that determination unless there are special facts or circumstances to do so. None of the grounds presented are so special for this Court to divert from its earlier ruling.

[7] The application for bail is refused.



A handwritten signature in black ink, consisting of a stylized 'D' and 'G' followed by a horizontal line.

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Hon. Mr Justice Daniel Goundar

Solicitors:

Messrs. Iqbal Khan & Associates for the Accused
Office of the Director of Public Prosecutions for the State