

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

MISCELLANEOUS NO. HAM 226 of 2020

BETWEEN : **SUDHIR KUMAR**

AND : **THE STATE**

Counsels : **Mr A Nand for the Applicant**
Ms S Shameem for the State

Date of Ruling : **23 October 2020**

RULING

- [1] The Applicant seeks bail pending trial. He is charged with five representative counts of rape against his stepdaughter. The allegations cover a period of seven years between 2014 and 2020. The complainant was under the age of 13 years at the time of the first alleged incident. She is now 18 years of age but still in school.
- [2] The Applicant is 43 years old. He worked as a machinery technician at a garment factory before his arrest on 12 September 2020. He had been in custody on remand since that date. He seeks bail on strict conditions and proposes his brother-in-law and a family friend as sureties.
- [3] The State objects to the granting of bail. The grounds for objection are set out in the affidavit of the complainant and the affidavit of the investigating officer.

- [4] The Bail Act 2002 (the Act) codifies much of the law relating to bail. Part II of the Act contains provisions of general application. The Act provides for two presumptions. An accused has an entitlement to bail (s 3(1)). This does no more than reflect the principle of the presumption of innocence, which is also stated in the Constitution. The entitlement will fail if it is not in the interests of justice that bail should be granted. Secondly, there is a presumption in favour of the granting of bail (s 3(3)). However, that presumption is rebuttable if it can be shown that the accused is charged with domestic violence (s 3(4)).
- [5] Section 17(2) of the Act states that the primary consideration in determining whether to grant bail is the likelihood of the accused appearing in court to answer the charge laid against him or her. The Court must also take into account the time the accused may have to spend in custody before trial if bail is not granted. The current practice of this Court is to hear the trial of an accused person who has been refused bail within 12-18 months from the date of arraignment. So if bail is not granted to the Accused the time in custody while in remand will be about 12-18 months.
- [6] Although the primary consideration in determining whether to grant bail is the likelihood of the accused person appearing in court to answer the charge (s 17(2)), the court may refuse bail if the interests of the accused person will not be served through the granting of bail or the granting of bail would endanger the public interest or make the protection of the community more difficult (19(1)).
- [7] The allegations of sexual violence against a stepdaughter by a stepfather is serious. The allegations arose in a domestic context. The charges constitute domestic violence under the Domestic Violence Act. The presumption in favour of the granting of bail is displaced.
- [8] The prosecution case is potentially strong based on the account of the complainant supported by circumstantial evidence. There is also a statement from the complainant that when she reported the incident to her biological mother she covered up the allegations in order to protect her partner, the Accused instead of protecting her daughter, the complainant. The alleged abuse continued when the complainant's mother did not respond to the complainant's report. Eventually when the matter was reported to police,

the complainant's mother disowned the complainant and chose to support the Accused, her partner. As a result, the complainant had been displaced from her home.

[9] It is clear from the facts presented to the court that the Accused holds a position of authority over the complainant as her stepfather and the complainant's mother as her partner. The complainant's mother has filed an affidavit in support for the Accused to be granted bail.

[10] When allegations of sexual violence occur within homes, it is easy for the Accused to intimidate or influence the complainant or family members who are potential witnesses to the allegations. Stringent bail conditions are unlikely to alleviate that risk of interference or intimidation. I am of the view that it is not in the public interest to release the Accused on bail in order to protect the complainant and other potential witnesses who are family members of the Accused.

[11] For these reasons, I refuse bail. I urge both parties to attend to all pre-trial issues so that the case can be assigned an early trial date.



A handwritten signature in black ink, appearing to read "Daniel Goundar".

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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