

IN THE HIGH COURT OF FIJI

AT SUVA

[CRIMINAL JURISDICTION]

CRIMINAL MSC NO. HAM 167 OF 2022

BETWEEN : **ATESHWAR PRASAD**

AND : **STATE**

Counsel : **Mr I Khan for the Applicant**
Ms K Semisi for the State

Date of Hearing : **27 June 2022**

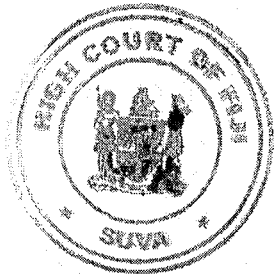
Date of Ruling : **7 July 2022**

RULING

- [1] This is a third application for bail pending trial by an accused who is charged with rape in two separate cases – HAC 72/ 21 and HAC 74/21. In HAC 74/21 the alleged complainant is a child.
- [2] In the first bail ruling delivered on 6 April 2021 the court found that the accused was unlikely to turn up for his trial due to the strong prosecution case and the likely sentence the court may impose if he is found guilty. The court also found that the accused was likely to interfere with the child witness and the Constitution required the child's interests and safety to be considered when releasing the accused on bail (Criminal Misc No HAM 55 of 2021).
- [3] In the second bail ruling delivered on 23 December 2021 the court found that there were no special facts or special circumstances shown by the accused to consider bail afresh (Criminal Misc No HAM 146 of 2021).

- [4] The case was set for trial on 2 May 2022. However, on the eve of the trial the accused changed counsel and caused the trial to be vacated. The trial is rescheduled to commence on 28 November 2022.
- [5] On 15 June 2022, a month after causing the trial to be vacated, the accused made this application for bail through his new counsel. The application is supported by an affidavit from the father of the accused, Rajeshwar Prasad. The change of circumstances relied upon by the accused are that there had been inordinate delay in prosecuting the matter and that he need to be released on bail so that he could take care of his mother who is terminally ill. Medical evidence of illnesses of the accused's mother have been provided in the affidavit.
- [6] I do accept that there has been some delay in prosecuting the case, but the accused has not shown any actual prejudice caused to him by the delay. The initial proceedings were terminated by the Director of Public Prosecutions because he had lost contact with the child complainant. Once contact was made with the complainant the proceedings were reinstated and the case was fixed for trial on 2 May 2022. It was the accused who caused the trial to be vacated due to last minute change of counsel.
- [7] Whilst I have great sympathy for the accused's mother being terminally ill, but medical illness of close relatives cannot be looked in isolation to release an accused on bail (*Silatolu v State Cr App No AAU0024 of 2003*). Exceptional or special circumstances are those circumstances which drive the court to the conclusion that justice can only be done by granting bail to an accused (*Mudaliar v State Cr App No. AUU0032 of 2006, 16 June 2006, Ward P*).
- [8] In this case, alternative arrangements can be made for the care of the accused's mother. The accused's circumstances are not such that justice can only be done by granting bail.

[9] The third application for bail is refused.



A handwritten signature in black ink, appearing to read "Daniel Goundar", is written over a horizontal dotted line.

Hon. Mr Justice Daniel Goundar

Solicitors:

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