

IN THE HIGH COURT OF FIJI
AT LABASA
[MISCELLANEOUS JURISDICTION]

Criminal Miscellaneous Case No.: HAM 01 of 2023

BETWEEN : **SANJESHWAR CHAND**

AND : **STATE**

Counsel : **Mr A Sen for the Applicant**
Ms L Latu for the Respondent

Dates of Hearing : **28 February 2023**

Date of Ruling : **03 March 2023**

RULING

1. The accused seeks bail pending trial. He is charged with attempted murder.
2. The State objects to the granting of bail on the grounds set out in the affidavit of D/Sgt Asish Kumar.
3. 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 has previously breached a bail undertaking or bail condition, or been convicted and has appealed against the conviction, or has been charged with a domestic violence offence (s 3(4)).

4. 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. The Court must also take into account the time the accused may have to spend in custody before trial if bail is not granted.
5. The accused is a taxi driver. He is 42 years old and is married with 3 children. His normal place of residence is Namoli, Batanikama, Labasa. If he is granted bail he is going to reside at his home. He has no criminal history. He offers his two brothers-in-law as sureties.
6. The prosecution case is set in paragraphs 15-16 of Sgt Kumar's affidavit. The victim was allegedly in an intimate relationship with the accused. On 12 December 2022, she accompanied the accused in his taxi from Labasa town to a secluded spot in Wailevu and had consensual sexual intercourse with him. When she got out of the vehicle to relieve herself, the accused allegedly attacked her with a cane knife. She was allegedly struck several times on the neck and left there. Some neighbouring farmers came to her rescue when they heard her distress calls. The witnesses alerted the police and the victim was taken to the hospital.
7. Three days later on 15 December 2022, the accused was arrested from Labasa hospital. There is some suggestion in the disclosures that the accused attempted to harm himself after the alleged incident.
8. Under caution interview, the accused made a full admission. There is some suggestion that he suddenly lost self-control when he saw the victim receiving

other calls. There is no suggestion that this was a premeditated crime but there is some suggestion that this may be a crime of passion and obsession with the victim.

9. All High Court trials in Labasa are heard within 12-18 months from the date of filing of the Information. At this stage this case can be heard in the first quarter of 2024. If the accused is remanded in custody the remand period will not be unreasonable.
10. The accused is facing a strong prosecution case. If he is convicted, he is facing life imprisonment. The safety of the victim is an important consideration as well. Fortunately she survived the attack. But her fear of the accused is legitimate as this is a domestic violence offence.
11. The State has succeeded in rebutting the presumption in favour of granting of bail. It is not in the interests of justice to release the accused on bail pending trial for his own safety and for the victim's personal safety.
12. Bail is refused. The substantive matter is listed for mention on 14 April 2023 9.30am.




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Hon. Mr. Justice Daniel Goundar

Solicitors:

A K Singh Lawyers for the Applicant

Office of the Director of Public Prosecutions for the Respondent