

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

MISCELLANEOUS CASE NO. HAM 164 OF 2023

BETWEEN: **NIKESH CHAND** **APPLICANT**

A N D: **THE STATE** **RESPONDENT**

Counsel: Mr. I. Khan with Mr. A. Prasad for Applicant
Ms. P. Kumar for the State

Date of Hearing: 28th June 2023

Date of Ruling: 13th July 2023

BAIL RULING

1. The Applicant filed this Notice of Motion, seeking an order granting him bail. This is his second bail application before this Court. The Notice of Motion is supported by an affidavit of the Applicant, stating the background of this application. The State is objecting to this application. The State filed two affidavits of Woman Detective Constable Saivoro Narara stating the State's objections. The Applicant filed two further affidavits in response to the State's objections.
2. The Applicant is charged with two counts of Rape, one count of Sexual Assault and two counts of Defeating the Course of Justice. In this case, the offences that the Applicant is charged with fall within the meaning of domestic violence offence. Hence, the presumption in favor of granting bail is displaced.

3. The previous bail application of the Applicant was refused on the ground that there was a likelihood of interfering with the witnesses under Section 19 (2) (c) (ii) of the Bail Act.
4. According to Section 14 (1) of the Bail Act, the Applicant could make any number of bail applications. However, the Court has the power to refuse such an application on the ground of frivolous or vexatious. (*vide Section 14 (3) of the Bail Act*). Moreover, Section 30 (7) of the Bail Act states that the Court could refuse to hear afresh bail application filed under Section 14 (1) of the Bail Act if the Court is not satisfied that some special facts or circumstances justify making a new application.
5. The Affidavit filed by the Applicant in support of this Notice of Motion contains precisely the same facts he adduced in the first bail application besides paragraph 13 of the Affidavit. Accordingly, the reasons for seeking an order granting him bail are (*vide paragraph 9 of the Affidavit of the Applicant*) ;
 - i. Look after his 72 years old sickly father,
 - ii. His wife cannot look after his sickly father alone as she needs to look after two small children,
 - iii. The Applicant wants to continue his barber shop business as he needs to look after his family, father and his employees,
6. According to paragraph 13 of the Affidavit of the Applicant, the change of circumstances are;
 - i. The Applicant is willing to re-locate to his elder brother's house in Sigatoka,
 - ii. His father is now staying with his elder brother in Sigatoka,
 - iii. His elder brother is now supporting his family by sending money through M-paisa and banking,
 - iv. He is planning to find an employment in Sigatoka as a barber or start his own shop,
7. Apparently, the fact that his father is now living with his elder brother and his family is currently supported by his elder brother negates many reasons for asking for bail. There is no longer any requirement for the Applicant to look after his sickly old father; his wife is not burdened with looking after him now.

8. The fact that his wife and brother-in-law are two main witnesses of the prosecution and the Complainant is his sister-in-law remains the same. Considering the close family proximity between the Applicant and those main prosecution witnesses, the Applicant proposed relocation could not be considered as a special circumstance or fact under Section 30 (7) of the Bail Act to consider this new bail application.

9. In conclusion, I refuse this bail application under Sections 14 (3) and 30 (7) of the Bail Act.



Hon. Mr. Justice R.D.R.T. Rajasinghe

At Suva

13th July 2023

Solicitors

Iqbal Khan & Associates for the Applicant.

Office of the Director of Public Prosecutions for the Respondent.