

IN THE HIGH COURT OF FIJI (WESTERN DIVISION)
AT LAUTOKA,
CRIMINAL JURISDICTION

CRIMINAL MISCALANEOUS CASE NO: HAM 212 OF 2023

BETWEEN: ROMIT PARSHOTTAM aka ROMIT MEGHJI

APPLICANT

AND

STATE

RESPONDENT

Counsel: Mr N. Padarath for Applicant
 Mr T. Tuenuku for Respondent

Date of Hearing: 7 September 2023

Date of Ruling: 8 September 2023

RULING

1. The Applicant seeks leave of the Court to travel out of jurisdiction. His application is supported by his own affidavit and the documents attached to it.
2. The Applicant in the substantive matter is charged with one count of Rape contrary to Section 207(1)(2)(a) of the Crimes Act of 2009. The complainant is the wife of the Applicant. At the caution interview, the Applicant denied the allegation. He pleaded not guilty to the charge in Court.
3. The State objects to the application on the basis that the Applicant is a flight risk that he might not return to Fiji to answer the charge. The State's concern is based on Applicant's strong business connections in New Zealand.

4. The Applicant is a Fiji national and a leading businessman. He is a director cum shareholder of leading companies based in Fiji and New Zealand (as listed in his affidavit) that distribute and sell local and international products (largely food items) to Fiji's leading hotels, resorts and supermarkets.
5. On 3 August 2023, the Applicant was granted bail by the Lautoka Magistrates Court. The conditions of bail required him to surrender his passport and a stop departure order was issued banning his travel out of Viti Levu.
6. In his affidavit, the Applicant states that, as part of his responsibilities as a director/shareholder, he is required to travel overseas frequently to conduct business meetings with business partners, suppliers, and clients. This is mainly to source new food products for supply chains. Majority of the products are imported into Fiji. To stay competitive, it is stated that he is required to travel and meet with suppliers to maintain his agency for the products.
7. In the present application, the Applicant seeks permission to travel abroad for three business events. As part of his business commitments, he is required to travel to New Zealand between 28 August 2023 and 5 September 2023. This is to visit the warehouse and meet with his suppliers in New Zealand. He has attached a copy of the letter "RM-2" to his affidavit from 'Premium Choice Foods', outlining the purpose of the trip. Thereafter, he is required to attend the 'The Fine Food Show' which is scheduled to take place between 10 September and 14 September 2023 in Sydney, Australia. This is a B2B (business to business) where suppliers and traders showcase their new products. The letter "RM-3" is attached to confirm his registration for this event. The third planned trip is to the USA between 19 September 2023 and 3 October 2023 to meet with the suppliers and source products for the new shop he is planning to open in Savusavu and for other shops in Fiji. The copy of the letter "RM-4" is attached to confirm the purpose of the trip to the USA.
8. The primary consideration in deciding whether to grant bail is the likelihood of the accused person appearing in court to answer the charges laid against him / her. The factors relevant in assessing the likelihood of surrender to custody are that-(i) the accused person's background and community ties(including residence, employment

family situation, previous criminal history);(ii) any previous failure by the person to surrender to custody or to observe bail conditions; (iii) the circumstances, nature and seriousness of the offence; (iv) the strength of the prosecution case; (v) the severity of the likely penalty if the person is found guilty; (vi) any specific indications (such as that the person voluntarily surrendered to the police at the time of arrest, or, as a contrary indication, was arrested trying to flee the country.

9. The documents attached to his affidavit show that the Applicant has considerable amount of business and proprietary interests and community ties in Fiji.
10. Prior to the current charge was laid against the Applicant, his wife, who is the complainant in the substantive case, had instituted family proceedings in the Lautoka Family Court. Based on an ex-parte application, the Lautoka Family Court on 6 February 2023 issued an interim stop departure order against the Applicant without his knowledge. He had been stopped at the airport on 12 February 2023 preventing him from leaving Fiji for New Zealand. The counsel for the Applicant has written to the complainant's counsel Mr. Iqbal Khan that he was not served the documents before obtaining the stop departure order despite ample time was available to do so.
11. Thereafter, the Lautoka Family Court has removed the said order on the conditions that he provided two sureties and a bond. After the uplifting of the above stop departure order, the Applicant has travelled abroad and returned to Fiji.
12. After the Applicant has been caution interviewed for the current charge on 23 February 2023, he has been released. During the period the Applicant was being investigated for the current allegation, he has travelled abroad and returned to Fiji. He had cooperated with the police investigations. All these facts are undisputed.
13. The Applicant has demonstrated his intention to defend the charge against him. He has denied the allegation at the caution interview and pleaded not guilty to the charge. In a bail consideration, the strength of the defence case, specifically in a case which turns on one word against the other, is equally important as much as it does in the prosecution case.
14. It is only the set of disclosures that is available at this stage to assess the strength or otherwise of the prosecution case. In *Seru v State* 2015] FICA 30; AAU 152.2014, the

Court of Appeal stated the following regarding evidentiary rules when it comes to considering bail. This observation is equally applicable to the present case:

[12] When considering an issue relating to bail, there is no requirement for formal evidence to be given. It is well established that the bail jurisdiction was not equivalent to a criminal charge, the rules of evidence need not apply, and a court may rely on written hearsay evidence provided it was properly evaluated. In *In re Moles* 1981/ Crim L 170 the Divisional Court stated that strict rules of evidence were inherently inappropriate when deciding a bail issue. In *R v Mansfield Justices, Ex p Sharkey* [1985] QB 613, 626, Lord Lane CJ stated that in a bail hearing the relevant material can be presented by a police officer. Also, under the Bail Act 2002 Forms have been prescribed to provide the relevant information to the courts from the Bar table."

15. It is noteworthy that, in the substantive matter, the complainant has made the complaint about the rape allegation on 30 January 2023, approximately two months after the alleged incident. Her explanation for the delay being that she was helpless. According to that statement, she was awake and sleeping naked on her bed at 3.16 am when the Applicant allegedly entered the room and asked her "what happened, you want a fuck? You waiting for me to fuck? before the alleged rape occurred.
16. After the conclusion of the caution interview of the Applicant on 23 February 2023, and the Applicant was released, the complainant has recorded another statement on 24 February 2023. In her second statement, the complainant mentions for the first time about a complaint being made to her mother and the Applicant coming home from elsewhere. She has also stated that the Applicant used to sleep in a spare room while stating that he slept next to her after having sex with her on that morning.
17. It is undisputed that, after the first complaint, the Applicant was caution interviewed and released on 23 February 2023 and that the current charge was laid after the complainant recorded her second statement upon which the Applicant was cautioned interviewed for the second time on 13 March 2023.
18. It is too early to predict about the truthfulness of the allegation as formal evidence is yet to be produced. However, circumstances of the case as revealed by the disclosures suggest that the Applicant has a strong case to defend himself. When the accused has a strong defence, there is a strong motivation for him/her to come to Court to face his/her trial. Therefore, the Applicant's intention to fight his case to clear his name must be taken into consideration in deciding whether the Applicant is a flight risk.

19. In granting bail, the Court is required to consider the interests of the accused as well. Given the Applicant's business profile, and his commitments abroad as a shareholder and a director of companies, both in Fiji and New Zealand, his physical presence for bargaining, purchasing and quality assurance will be in the interests not only for his businesses but also in the interests of consumers in Fiji.
20. The State has drawn my attention to the fact that the Applicant is one of the owners of Premium Choice Food Ltd, which is claimed to be one of the suppliers based in New Zealand. It appears that the said company is a limited liability company, which is a distinct entity from his persona in the eyes of the law, and therefore his dealing with the company should be viewed from that perspective.
21. In *State v Khan* [2008/ FJHC 62; HAC 009.2008 (11 April 2008)] the High Court adopted the following statements of Gates J (as he was then) in *Iliaseri Sagasaga v. The State* HAM 005.06S where it was stated:

Bail conditions, imposing as they must restrictions on persons awaiting trial, must therefore be reasonable and commensurate with the gravity of the offence **and with the individual risks identified as applicable**. Bail must not be fixed excessively, in effect, denying the applicant an opportunity to take up the grant of bail. This has been a principle of great antiquity in the common law. (emphasis added)

22. In *Seniloli v. State Criminal Misc. Case No. HAM029.04* the accused made an application for release of passport for overseas travel for medical review pending his trial. Gates J in granting the application said:

This is an unusual application in that it comes on the eve of the trial and does not concern an already identified need for urgent medical treatment. However in weighing the various objections, I consider it more likely that the applicant will attend, and that he will not delay the start of that trial: section 17(2) Bail Act. Because of the view I take on attendance some relaxation of the conditions set can be allowed. Applications based on these grounds may not always succeed however.

23. In *Qarase v Fiji Independent Commission Against Corruption* [2009] FJHC 146 HAM 038. 2009 (22 July 2009) Goundar J observed as follows:

Whilst the need to secure the accused's attendance at hearings is a paramount consideration in this kind of application, the purpose of the overseas visit, the

length of time the accused will be abroad and the inconvenience caused to the administration of justice are equally relevant factors for consideration.

24. The reason advanced by the applicant in that matter for the overseas trips was to raise funds to pay for his legal costs. His Lordship did not find the applicant to be a flight risk. However, he was not satisfied that the applicant had shown a good cause to travel overseas. The applicant had produced no evidence of any details of his legal expenses. Neither the applicant had made any point that he had no other means to pay for his legal expenses than to travel overseas and raise funds, nor has he made a case that he would be prejudiced in any manner whatsoever if he was not allowed to travel abroad. In the result, the application had been dismissed.
25. In Madhu Shivan Krishna HAM 205 OF 2023 Sharma J, having heard the counsel and read the affidavits and the supporting documents filed, was satisfied that a bail variation be granted for the applicant to travel to the USA for the purpose of undertaking a bachelor's degree in business administration.
26. The information has just been filed in the Applicant's substantive case. This Court is still hearing 2018-2020 matters. Therefore, it is not conceivable that the Applicant's trial will take place soon. It is in the Applicant's interest that he leaves this jurisdiction for the stated purposes and for the limited period permitted by this Court on strict bail conditions.
27. Application for bail variation is granted. The following conditions are made:
 - i) The Applicant must deposit a cash bond of FJD15,000. 00
 - ii) The Applicant must produce a surety bond with two new sureties, (in addition to the existing two sureties) who shall sign a fresh surety bond of FJD 25,000.00 each,
 - iii) The Fiji passport of the Applicant to be released to the Applicant upon completion of all documentary requirements, signing of the surety bonds, and depositing the additional cash bond of FJD 15,000. 00.
 - iv) The passport must be surrendered to the High Court Registry upon completion of each travel within two days after arrival in Fiji.

- v). The High Court Registry is to hold the cash bond until the completion of the substantive matter (HAC 117 of 2023). The Applicant is advised that the cash bond will be forfeited to the State if there is any breach of the bail conditions.
- vi). The original of the Certificate of Title bearing No 21484 (RP-5) to be deposited in safe custody of the High Court Registry and will be released on an application made to Court to that effect upon completion of his overseas travels. (It is now informed that the said title deed is deposited with Westpac Bank, Lautoka, as a security for a Mortgage. The Westpac Bank is ordered to hold the said deed until the Applicant returns to Fiji on 3 October 2023 and a court order permitting the release of the same is received by the Court).
- vii). The condition requiring the Applicant to report to police will be lifted during Applicant's travel abroad. All other existing bail conditions imposed by the Magistrates Court will remain operational other than those connected to the travel ban.
- viii). Subject to the conditions above, the Stop Departure Order imposed by the Magistrates Court at Lautoka is hereby uplifted to allow the Applicant to travel to
- (i). New Zealand between 28 August 2023 and 5 September 2023.
 - (ii). Sydney, Australia between 10 September 2023 and 14 September 2023.
 - (iii). The United States of America between 19 September 2023 and 3 October 2023.
28. The High Court Registry is directed to communicate this order to the Department of Immigration forthwith



Aruna Aluthge
Judge

At Lautoka
8 September 2023

Solicitors:

Samuel K Ram Lawyers for Applicant

Office of Director of Public Prosecution for Respondent