

IN THE HIGH COURT OF FIJI AT SUVA
CRIMINAL JURISDICTION

Miscellaneous Case HAM No. 319 of 2024

IN THE MATTER of an application for bail pending Trial at the Suva High Court criminal case HAC 148 of 2024

Krishneel Ram -v- State

For the Applicant: Mr. Raikanikoda
For the State: Mr. Singh

Date of Bail Hearing: 24th December 2024
Date of Bail Ruling: 24th January 2025

BAIL RULING

1. This is another bail application filed in this matter by the Applicant. To date, this is his fourth application.
2. The Applicant filed a Notice of Motion on the 4th December 2024 seeking the following: -
 - (a) An order that the Applicant be admitted to bail pending hearing under section 12 (a) of the Bail Act 2002 upon such terms and conditions as this Honourable Court deems fit pending plea and trial.
3. The application is supported by the affidavit of Krishneel Ram deposed on the 4th of December 2024 and he has set out the grounds for the application.

The Grounds for the Application

4. The Applicant is charged with 1 count of Assault Causing Actual Bodily Harm contrary to section 212 (1) of the Crimes Act; 1 count of Rape contrary to section

207 of the Crimes Act and 1 count of Breach of Domestic Violence Restraining Order contrary to section 77 (1) of the Domestic Violence Act.

5. The alleged incident took place on the 6th day of October 2023 and these charges were laid on the 23rd of October 2023 after one month 14 days.
6. He cooperated with the Police though he was arrested on a bench warrant for not attending Court. It was not his intention to evade Police, and he was wrongly advised by Police on the status of his matter on its last call date in Nasinu Court.
7. He has now spent almost 6 months in remand and his two previous Bail applications were rejected and denied by the Court. His family has been affected drastically in terms of their daily living and sustenance.
8. His children are now not attending school for the last few months now and no one has assisted them with financial assistance, food ration, school expenses uniforms shoes, medication and many more as he is the sole breadwinner in the family.
9. He is seeking bail to look after his children, nurturing them and guiding them and supporting them in their daily lives. This has not been possible because he is in remand.
10. He is also seeking bail as the Remand Centre is full.
11. He offers the following sureties: -
 - (a) Mr. Epi Waqalevu, Caretaker of Sports City Complex, Suva – phone number 9055123.
 - (b) Mr. Avikash Sen, Mechanic of Narere Stage 1, phone number 9581154
12. He therefore submits that the bail application should be granted, and he be allowed to proceed on bail and he promises to attend all of his Court dates and his Trial and not interfere with prosecution witnesses.
13. The application for bail is opposed and the State has filed the affidavit of WDC 3723 Reshmi opposing the application.

The opposition to Bail

14. WDC 3723 Reshmi, based at the Nasinu Police Station submits the following grounds for the refusal of bail: -

- (i) She has served with the Fiji Police for the past 18 years and is currently based at Nasinu Police Station. She is familiar with the facts of this case as she is the Investigative Officer for this case.
- (ii) On the 9th of October 2023 a report was received from Rakeshni Lata Prasad (the complainant) at the Nasinu Police Station regarding an allegation of breach of a DVRO by her husband Mr. Krishneel Ram, the Applicant.
- (iii) The report lodged at Nasinu Police Station was that the Applicant entered the complainant's house despite there being a DVRO (No. 271/23) in place. The Applicant then asked the complainant to have sexual intercourse, but she refused.
- (iv) The Applicant then punched the complainant on her face and slapped her. He then pushed her on the bed and forcefully had sexual intercourse with her.
- (v) The Applicant was arrested, interviewed under caution and charged on the 23rd of October 2023 and he was first produced in Nasinu Magistrate's Court on the 27th of October 2023 and the matter was then send up to the High Court.
- (vi) In his record of interview, the Applicant had confirmed that there was a DVRO in place and he had come into contact with the complainant. He also made admissions that he had sexual intercourse with the complainant, however he claimed that it was consensual.
- (vii) When the matter was first called in the High Court on the 3rd of November 2023, the Applicant was not present, and the matter was adjourned to the 27th of November 2023.
- (viii) On the 27th of November 2023, the Accused was still not present, and the Court gave directions for the Information and Disclosure to be served on the Applicant. The matter was adjourned to the 8th of December 2023.

- (ix) When the Applicant was still not present on the 8th of December, a bench warrant was issued for his arrest. The warrant was pending until 15th April 2024 when he was arrested, and he was produced in Court on the 14th of May 2024.
- (x) When he was arrested by the Police and asked why he had not attended his Court dates. He informed the Police that he had secured new employment, and he had been supporting his children financially hence he could not attend Court.
- (xi) He initially filed a bail application however this was withdrawn by counsel from Legal Aid. The Applicant then withdrew his application, and he also withdrew instructions from Legal Aid and engaged Messrs. Raikanikoda Law. His new counsel then filed the current application before the Court.
- (xii) With respect to the application, the State confirms that the Applicant is a first offender. He now faces 3 counts – Assault with intent to commit Rape, 1 count of Rape, and 1 count of Breach of Domestic Violence Restraining Order.
- (xiii) These charges are very serious in nature and the offence of Rape carries a maximum term of life imprisonment, Assault carries a maximum sentence of 5 years imprisonment and breach of a domestic violence restraining order carries a fine of \$1, 000 and/or a term of imprisonment of 12 months.
- (xiv) Considering the applicant's history of not attending Court since the matter was transferred to the High Court, the applicant has shown that he cannot be trusted to be enlarged on bail.
- (xv) This is the fourth application for bail filed by the applicant.
- (xvi) The State submits that there is a domestic relationship between the applicant and the complainant as they are husband and wife.
- (xvii) The allegations against the applicant are serious in nature and he has an incentive to abscond.
- (xviii) For those reasons, the State submits that the bail application should be refused.

15. The matter was then adjourned for bail hearing on the 28th of October 2024. The parties agreed that they would rely on their documents filed in Court

Analysis

16. The application is made pursuant to section 12 (a) of the Bail Act 2002.

17. The applicant is a first offender therefore he would normally be entitled to bail as of right. He however is charged with a domestic violence offence therefore the presumption in his favour is displaced.

18. This is his second application where he is appearing in support of his application. His first two applications were made when he was at large with a pending bench warrant out for his arrest.

19. This Court has already refused his application on the 11th of November 2024 and found as follows: -

- He (the Applicant) has not provided any evidence in support of his contention that his family is suffering with his absence from the home. No evidence from the children's schools or any other evidence from the person or persons looking after the said children.
- Contrasted with this is the Court record. He has only appeared in the High Court under arrest in May 2024, when the transfer order was made last year 27th October 2023.
- The applicant has not satisfied this Court that he will return to Court to answer his charges. The complainant is his wife, who was protected by a DVRO, and it is alleged that he breached this DVRO when he assaulted her and then allegedly raped her.
- The delay in these proceedings is largely due to the applicant's initial absence and the bench warrant that was issued for his arrest.
- After considering the above, the Court finds that it is not in the interest of justice to grant bail to the applicant.

20. This application and the evidence tendered in support is basically identical to the previous unsuccessful application, although the only difference is the details of the two new proposed sureties.

21. The Applicant has not provided any evidence of any significant change in circumstances, sufficient for me to review the previous refusal of bail. This is fatal to the application before the Court.

22. After considering the above, the Court finds that it is not in the interest of justice to grant bail to the applicant.

Krishneel Ram this is the ruling on Bail: -

- 1. The fresh Application for Bail pending Trial is refused.**
- 2. The parties will attend to preparing this matter for Trial**

There is a right of appeal or review.



Mr. Justice U. Ratuville
Puisne Judge

cc: - Office of Director of Public Prosecutions
- Raikanikoda Law