

IN THE HIGH COURT OF FIJI

AT LAUTOKA

CRIMINAL MISCELLANEOUS JURISDICTION

CRIMINAL MISCELLANEOUS CASE NO: HAM 65 OF 2018

BETWEEN: **OSEA CAWI**

Applicant

AND : **STATE**

Respondent

Counsel: **Applicant in Person**

Ms. S. Babitu for Respondent

Date of Hearing: **11th May, 2018**

Date of Ruling: **17th May, 2018**

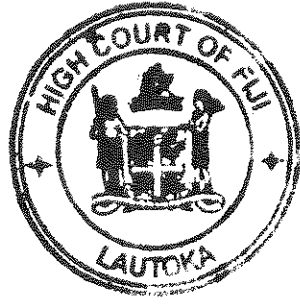
BAIL RULING


1. The Applicant applies for bail pending trial. He is charged with one Count of Rape contrary to Section 207 (1) and 2(b) and (3) of the Crimes Act 44 of 2009. Complainant in the substantive matter is an underage girl.
2. The State filed their response supported by an affidavit of CS Meli Yauvoli. The State is objecting to bail on the ground that the Applicant had violated bail conditions.

3. The Applicant was granted bail by this Court on the 29th July 2016 with stringent bail conditions.
4. The Applicant breached bail conditions and failed to appear in Court on 24th August, 2017. He was arrested on a bench warrant on 15th March, 2018, after approximately 7 months. He had fled his normal place of residence to evade arrest. The bench warrant had to be executed with much difficulty when police officers searched for him in several places.
5. The Applicant claims that he had a dislocated arm and knees and has provided a medical certificate to substantiate his claim. However, as per the medical certificate, the Applicant only had a "right knee pain/ swelling. The medical certificate is not consistent with his claim in Court.
6. The medical report further says that he was fit to resume duty on 28th August, 2017. However, he failed to appear in Court or at least inform the Court that he was unable to attend Court due to suffering from an ailment.
7. Applicant's explanation for his failure to attend court is not acceptable.
8. The Applicant had ample opportunity to abide by bail conditions. He had ample time to surrender to court. But he failed to abide by bail conditions. He did not come to court until he was arrested by police. He has brought suspicion upon himself.
9. The primary consideration in granting bail is whether the Applicant is likely to surrender to custody and appear in court to answer the charge. There is a real likelihood that Applicant will not appear in Court if bail is granted.

Order-

10. Bail refused.
11. Adjusting the trial diary, Applicant's substantive matter will be taken up for hearing as soon as possible.
12. 30 days to appeal to the Court of Appeal.




Aruna Aluthge
Judge

At Lautoka

17th May, 2018

Solicitors: Applicant in Person

Office of the Director of Public Prosecution for the Respondent