

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

MISCELLANEOUS CASE NO: HAM 231 of 2016

BETWEEN : **ELIA LEWENI VULA** **APPLICANT**

AND : **THE STATE** **RESPONDENT**

Counsel : Mr. Rayawa for the Applicant
: Mr. Tuenuku for the State

Date of Hearing : 10th February 2017

Date of Ruling : 13th February 2017

BAIL RULING

1. The Applicant files this notice of motion, seeking an order that the Applicant be granted bail pending his trial. The Notice of Motion is being supported by an affidavit of his uncle, Simone Rauku, stating the grounds for this application. The Respondent filed an affidavit of DC Jitendra, in opposition to this application.
2. Subsequent to the filing of respective affidavits, the matter proceeded to hearing on the 10th of February 2017. The learned counsel for the Applicant and the Respondent made their respective oral arguments and submissions during the course of the hearing. Moreover, the learned counsel for the Applicant filed a written submissions. Having carefully considered the respective affidavits and submissions of the parties, I now proceed to pronounce my ruling as follows.
3. The Applicant has been charged with one count of Rape, contrary to Section 207 (1) and (2) (b) of the Crimes Decree. The Applicant was first produced before the Magistrate's

Court of Nausori on the 28th of October 2016. The learned Magistrate has granted him bail and transferred the matter to the High Court pursuant to Section 191 of the Criminal Procedure Decree. The Applicant appeared in the High Court on the 18th of November 2016, where Justice Fernando revoked the bail of the Applicant on the grounds that the victim is a juvenile and the Applicant is related to the victim as her cousin. The Applicant has been in remand custody since then.

4. This application for bail is mainly founded on the ground that the victim now lives at Logani, Naimasimasi near Korovou town, and not in close proximity to the place of residence of the Applicant.
5. DC Jitendra in his affidavit did not specifically address the issue of the current place of residence of the complainant. He has merely stated that the Applicant is related to the victim and resides in the same village, therefore a real likelihood exists that the Applicant could interfere with the witnesses.
6. The Applicant did not dispute that the victim is related to him as a cousin. Hence, I find the Applicant and the victim are in a family relationship and this offence falls within the meaning of Domestic Violence pursuant to Section 3(1) of the Domestic Violence Decree.
7. Section 3(1) of the Bail Act stipulates that every accused person has a right to be released on bail, unless it is not in the interest of justice. Section 3(3) of the Bail Act has further enhanced the above rights, stating that there is a presumption in favour of the granting bail. However, Section 3 (4) Bail Act states that the presumption in favour of granting bail has been displaced in respect of the accused who has been charged with an offence under domestic violence. Accordingly, the Applicant is not entitled to rely on the presumption as stipulated under Section 3 (3) of the Bail Act. However, the displacement of the presumption in favour of bail does not mean that the Applicant's right to be released on bail has been taken away. Still, the court is required to take into consideration whether the interest of justice warrants him to be remanded in custody.

8. Section 19 (2) (d) of the Bail Act, as amended by Part II of the Schedule of the Domestic Violence Decree has specifically stated that the safety of the affected person needs to be taken into consideration in determining bail in an application of this nature, where it states;

“As regards the safety of a specially affected person when the accused is charged with a domestic violence offence –

i) the nature and history of alleged domestic violence by the accused in respect of the person against whom the alleged offence has been committed and any other specially affected person;

ii) the views of the person against whom the alleged offence has been committed and any other specially affected person about the risk, if any, that the accused may pose to the safety and well-being of a specially affected person while on bail;

iii) whether a domestic violence restraining order is in effect for the protection of a relevant specially affected person;

iv) the likelihood of the accused person committing a further domestic violence offence while on bail.”.

9. The offence is a serious offence as defines under the Section 2 of the Bail Act. The Respondent did not provide the views of the victim or any other affected person in respect of granting the Applicant bail. The learned Counsel for the Respondent, during the course of the hearing, admitted that there is no information that could suggest that the Applicant or his family members could approach the victim or her family and interfere with them. The learned Counsel further conceded that the victim is now living in another village that is far from the place of the residence of the Applicant.
10. The Applicant duly adhered the bail condition imposed on him by the learned Magistrate of Nausori and appeared in the High Court on the 18th of November 2016, as ordered.

11. Accordingly, it is my view that imposition of strict bail conditions together with Interim Domestic Violence Restraining Order could manage any risk of intervention with the victim by the Applicant. I accordingly grant the Applicant bail on following conditions, they are;
- i) \$ 1000 bail bond with two suitable sureties,
 - ii) Not to interfere with the victim and any other prosecution witnesses,
 - iii) Not to reoffend,
 - iv) Not to threaten, assault or harass the victim,
 - v) To reside at the address given in the bail form until the hearing of the substantive matter is concluded,
 - vi) To surrender all travel documents to the Registry of the High Court,
 - vii) Not to travel outside the Fiji Islands, without the prior approval of this court,
 - viii) To report to Nausori Police Station on every Saturday between 6a.m. to 6 p.m.
12. Moreover, I issue an Interim Domestic Violence Restraining Order against the Applicant with standard non-molestation condition and no contact orders. If the Applicant breach any of the conditions stipulated in the Interim Domestic Violence Restraining Order, he can be charged and prosecuted for an offence under the Domestic Violence Decree.
13. Thirty (30) days to appeal to the Fiji Court of Appeal.




R.D.R.T. Ragasinghe
Judge

At Suva

13th February 2017

Solicitors

Rayawa Law for the Applicant

Office of the Director of Public Prosecutions for the Respondent