

IN THE HIGH COURT OF FIJI
AT SUVA
CRIMINAL JURISDICTION

CRIMINAL CASE NO: HAM 30 of 2023

STATE

-v-

ILAI NAUO NAULIVOU

Counsels:

<i>Ms. Mataika P</i>	-	<i>For Prosecution</i>
<i>Mr. Naimila T.</i>	-	<i>For Accused</i>

Date of Ruling: 31.03.23

RULING

1. The Applicant charged with the offence of **Attempted Murder** contrary to **Section 44 (1)** read with **Section 237** of the **Crimes Act of 2009**, has filed this **bail** application seeking **bail**. This is the applicant's first bail application, since he was arrested and remanded on the 08th November 2022.
2. The State has filed its response to this bail application, objecting to bail, supported by the affidavit of **WDC 5462 Taina Lewatu** the investigations officer to the offence alleged by the prosecution.
3. Submissions in support of bail on behalf of the Applicant;
 - i) Pursuant to **Section 13** of the Constitution and **Section 3(1)** of the Bail Act of 2002, every person charged with an offence has a right to be released on bail, unless it is not in the interest of justice. **Section 3 (3)** states that there is a presumption in favor of granting of bail.
 - ii) Applicant informs this Court that in furtherance of a de-facto relationship with his partner, he has 3 children and he is the sole bread-winner of the family. Therefore, he pleads this Court to release him on bail to provide for his family.
 - iii) He submits to this Court that his elderly mother expects his support for living and if granted bail he intends to reside with his mother in Makoi, where there will be no opportunity to interfere with witnesses in his substantive matter.
 - iv) He further informs this Court that he has a clear criminal record and it is very unlikely that he will not attend Court, if he is granted bail. He contends that according to **Section 17 (2)** of the **Bail Act**, the primary consideration in granting bail is the likelihood of the Accused appearing

in Court and answering the charges and he submits that there is no danger in him not appearing in Court.

4. Submissions of the State in opposition to bail:

- i) **WDC 5462 Taina Lewatu** informs this Court that in this matter the Applicant is charged with stabbing a taxi driver with a kitchen knife for no provocation, when he was providing transport to the Accused and his de-facto partner, consequent to an altercation between him and his partner.
- ii) It is tendered on behalf of the state that the de-facto partner of the accused is the main eye-witness in this matter and if the Applicant is granted bail there is a high likelihood of him interfering with this key witness.
- iii) Further, it is submitted that since the Applicant had admitted to the commission of the offence at his caution interview, there is a high likelihood of the Applicant evading Court and avoid attendance of Court, if bail is granted.

The Law and Analysis

5. According to **Section 3 (1)** of the **Bail Act 2002**, though every person accused has a right to be released on bail that right is subject to interest of justice. According to the submission made by parties, the Applicant is charged in the substantive matter for stabbing an innocent taxi driver, who had no connection with the Applicant, except for engaging in his usual employment.
6. In this light, this Court identifies that Under **Section 18 (1) (C)** of the **Bail Act of 2002**, the Court is entitled to refuse bail if the Court sees the requirement of protection of the community in view of public interest.
7. Further, the state has brought to the attention of this Court that the main eye-witness to the substantive matter is the de-facto partner of the Applicant and there is a likelihood of the Applicant interfering with this key witness, if granted bail.
8. In reaching a just decision in this matter, this Court has taken notice of the Supreme Court decision of **Abhinesh Kumar v The State [2021] FJSC 1; CAV 20 of 2020 (5 February 2021)**, where His Lordship the Chief Justice stated, as below:

“Before coming to a decision to deprive personal liberty of a person, interests of public and interests of the accused must be rightly balanced. In balancing competing interests, courts must be mindful of the primary consideration in determining bail; that is the likelihood of the accused person surrendering to custody and appearing in court to face his or her trial.”

9. However, in this matter, in considering the circumstances, this Court may require to give priority to public interest over the personal liberty of a person, especially since an innocent bystander is the victim in this matter and the party the applicant had the altercation with is the main eye-witness.

10. Having carefully considered the above discussed reasons, I refuse the application of bail on the ground that there is a high likelihood of the Applicant interfering with the main eye-witness in this matter, if granted bail.

11. Thirty (30) days to appeal to the Fiji Court of Appeal.



A handwritten signature in blue ink, appearing to read "Thushara Kumarage".

Hon. Justice Dr. Thushara Kumarage

At Suva
31st March 2023

cc: 1. *Office of the Director of Public Prosecutions*
2. *Legal Aid Commission*