

**THE MAGISTRATE COURT**  
**AT NASINU**  
**CRIMINAL JURISDICTION**  
**CRIMINAL CASE NUMBER 1234/15**

STATE

v.

PITA MATAIRAVULA

COUNSEL : MR. DELANEY FOR THE STATE  
: MR. RAZA FOR THE APPLICANT

DATE OF HEARING : 3rd November 2015  
DATE FOR RULING : 13th November 2015

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**BAIL RULING**

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1. The applicant is charged with the following offence;

**CHARGE**

**(COMPLAINT BY A PUBLIC OFFICER)**

**STATEMENT OF OFFENCE (a)**

**SEXUAL ASSAULT:** Contrary to section 210 (1)(a) and (3) (a) of the Crimes Decree No 44 of 2009.

**Particulars of the Offence [b]**

**PITA MATAIRAVULA AND OTHERS** on the 28th day of November 2012 at Colo-i-Suva in the Central Division unlawfully and indecently assaulted **IOWANE BENEDITO** by poking short hard objects at the anus and genitalia of **IOWANE BENEDITO**.

2. The applicant now wishes to be granted bail and the following reasons were submitted by Mr. Raza;
  1. The applicant is employed in the Republic of Fiji Military Forces and is married with 2 children aged 4 and 1. He resides in Kinoya. Mr. Raza submits that the applicant is not a

flight risk. He is not and has not, attempted to evade police. In any event, as Mr. Raza submits, there is no evidence to show otherwise. Mr. Raza, reminded the court of section 3, 17 and 19 of the Bail Act of 2002. The applicant has no previous conviction and unless the contrary is proved, then the applicant should be granted bail.

2. He further added that there is no likelihood of interfering with the Police. There has been no evidence shown. There have been allegations made, but no evidence in Court. He further submitted that there is no chance of the applicant reoffending whilst on bail.
  3. The applicant also has a matter in the High Court, Lautoka. Mr. Raza submitted that he has appeared on all dates when his case was called. Mr. Raza further went on and stated that the applicant completely understands that he needs to follow all the conditions of the court, failing to do so, the applicant will only have himself to blame.
3. The State object to bail. Below are the reasons put forth by Mr. Delaney;
1. The risk of the applicant not complying with bail conditions are manifested for the following reasons; firstly, he submitted that there have been two attempts to bring the applicant to court. On both occasions the applicant did not obey police directions.
  2. Mr. Delaney submitted that now, since there are two charges against the applicant in two separate courts, he is a flight risk.
  3. The offence is serious one and one in which the public are most interested in.
4. In reply, Mr. Raza answered in the following;
1. The applicant has a Constitutional right to bail. If there is any evidence it should be expressed by the investigating officer. The applicant is a free man. He has not attempted to evade the law as some are lead to believe.
  2. The decision made by this court must be made on facts and not conjectures.
5. The Court, at the request of Mr. Delaney allowed the summoning of the Investigating Officer to be called to give evidence. There was no objection by Mr. Raza.

6. The officer called was Inspector Epeli Senitiri. He is with the Criminal Investigation Department. He is the Investigating Officer in this case. Under oath he stated that when there is an issue with regards to military officers, there is a particular channel that is used. The Commissioner of Police sends a message to the Commander of the Military and then the message is actioned. He stated categorically that there was no occasion when the Police went to the Military Camp for the purpose of arresting the applicant. The Inspector went on further to say that they had gone to the applicant's residential address to arrest him. When they had approached the residence, they received information from his wife that the applicant went to the bread shop. The police waited for applicant to return. The applicant did not return home. Then information came in that the applicant had gone into the military camp. The Inspector received that information on the 21st of October 2015.
7. At no occasion did the Police attempt to arrest the applicant while he was in Military Camp because there is a proper channel of communication that exists for this very purpose.
8. The Inspector then informed the court that the police officers were sent to Lautoka High Court in an attempt to arrest the applicant for this matter. He testified that this attempt proved futile. There was instruction given by a senior Police Officer, a Superintendent Eparama Waqa , who informed them that the applicant was going to be brought to the Crimes Investigation Department Office the very next day. Again, the applicant did not show up.
9. In cross examination, the inspector admitted that he did not put this information into his note book, he had put it into his diary. He admitted that he did not have any information in his notebook to substantiate this. There is also no evidence that the applicant is going to leave the country.
10. In reexamination, Inspector Senitiri clarified that he as well as other officers are ensuring that they are making proper records as they happen.
11. There was no further questioning for the witness.
12. After hearing these two well articulated arguments from senior counsels the court adjourned for deliberation.
13. **The Law**

14. Section 3 (1) of the Bail Act 2002 stipulates that every accused person has the right to bail unless it is not in the interest of justice that Bail be granted.

15. Section 17 of the Bail Act 2002 further stipulates that in the determination of granting or refusing bail the Court must take into consideration the following;

*-(1) When deciding whether to grant bail to an accused person, a police officer or court, as the case may be, must take into account the time the person may have to spend in custody before trial if bail is not granted.*

*(2) 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 or her.*

*(3) When a court is considering the granting of bail to a person who has appealed against conviction or sentence, the court must take into account-*

*(a) the likelihood of success in the appeal; (b) the likely time before the appeal hearing;*

*(c) the proportion of the original sentence which will have been served by the applicant when the appeal is heard.*

16. The court also considers Section 19(1) of the Bail Act 2002

*19. an accused person must be granted bail unless in the opinion of the police officer of the court, as the case may be-*

*2. (1) The accused person is unlikely to surrender to custody and appear in court to answer the charges laid;*

*3. (2) The interests of the accused person will not be served through the granting of bail ; or*

*(3) Granting bail to the accused person would endanger the public interest or make the protection of the community more difficult.*

17. Considering the decision made by Justice Shameem in **Tak Sang Hoa v The State** (2001) FJHC 15 and Justice Fatiaki in **Adesh Singh & Others** Miscellaneous Act No. 11 and 12 of 1988. I consider the following factors:

*a) The presumption of innocence;*

- b) *Whether the accused to appear to stand trial;*
- c) *Whether bail has been refused previously;*
- d) *The seriousness of the charges;*
- e) *The likelihood of the accused re-offending on bail ;*
- f) *Any interference with prosecution witness;*
- g) *The accused's character;*
- h) *The accused's right to prepare his defence;*
- i) *The likelihood of further charges;*
- j) *The State's opposition to bail*

**18. Analysis**

- 19. In this case, the State seek to oppose bail on the grounds that the accused is a flight risk. The State submit that the applicant will not appear in court to answer to the allegation that is put to him. In this case, that allegation concerns sexual assault.
- 20. There was a lot of evidence given from the bar concerning this matter. Submissions were made, conjectures given and scenarios formulated. This is not evidence that the Court can use to weigh in reaching a proper decision. Proper decisions must use evidence that has been adduced via proper procedures.
- 21. What is available, and what this Court will use is the sworn testimony of the Investigating Officer. Under oath, the Investigating Officer has noted two occasions where Police have intended to arrest the applicant. The first attempt was at the applicant's house. He was not there. Information came in that he had gone to the shop. He did not return. He went into the Military Camp.
- 22. The second attempt occurred in the Lautoka High Court. Police officers from Suva had gone there in another attempt to arrest him. Information had come in again that the said applicant was to appear on the morrow at the CID Headquarters. He did not appear.
- 23. Mr. Raza submits that the applicant is a free citizen and he is entitled to freedom of movement. He has been appearing for his matter in the High Court in Lautoka, he is capable of following Court orders and if the State wanted to arrest him there was ample time and opportunity to do so.

24. Mr. Delaney submitted that attempts have been made and have been unsuccessful. He further submits that the applicant came voluntarily *after* the bail ruling of his co accused in related matter. This action he submits, must not be overlooked.
25. Mr. Raza is correct that the applicant is presumed innocent and is entitled to have that presumption in his favour. Mr Raza is also correct in stating that there is a presumption for bail for the applicant and this is stipulated under section 3 of the Bail Act 2002. Having said that, it is important to be reminded of the fact that certain rights, have certain limitations that are prescribed by law. There are certain conditions and considerations that must be made before limiting that right.
26. The State submit that this applicant in these circumstances warrants a limitation of his freedom. They submit that bail should not be granted based on the evidence given before the Court.
27. Mr. Raza stated that the applicant is a free man. However, freedom does not mean *no regulation*. It is important to note that if the law requires the appearance of a person. That person must appear. Police Officers have the authority to question and to ask citizens questions or to be taken down to the station for further questioning. This actions are not illegal. It is part of due process.
28. What is concerning is, if citizens do not obey or do not assist police officers who have come with the intention of furthering investigation.
29. So the question now posed is this. Is the action by the applicant of not assisting police or appearing to follow their authority make the applicant a flight risk? Does this show that the applicant is *unlikely* to appear in Court to answer to the allegation put against him?
30. Mr. Raza submits that the applicant has been following all his bail conditions from the Lautoka High Court. I agree with this submission. This shows that the applicant can follow orders by the Court.
31. Mr. Delaney submits that twice there has been attempts made to further investigations by summoning the applicants and both have been to no avail. Mr Delaney submits that this shows the applicant will not follow the orders of this Court if granted bail.

32. The Court also notes the *timing* of the surrender of the applicant in that he surrendered after his co accused were granted bail. The Court takes this into consideration as well and the fact that are now two allegations against the accused person in two courts.
33. In arriving at a decision, this Court considers the submission made by both learned counsels. The Court considers the evidence under oath given by the Investigating Officer and the cross examination and reexamination of him.
34. Pursuant to section 17(2) and 19(1) of the Bail Act 2002 the Court is not persuaded that the applicant will appear in Court to answer to the charge that has been put to him.

*Bail refused.*



Charles Ratakele  
Magistrate