

**IN THE SUPREME COURT
OF THE REPUBLIC OF VANUATU**
(Criminal Jurisdiction)

Criminal Case No. 644/ 2016

PUBLIC PROSECUTOR

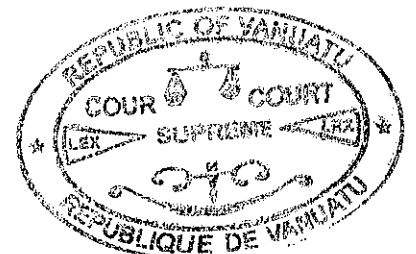
V

SEAN WINSLETT

Ruling: Tuesday 22 March 2016 at 4:15 pm
Before: Justice SM Harrop
Appearances: Simcha Blessing for the Public Prosecutor
Andrew Bal for the Defendant
(Mr Winslett is also present)

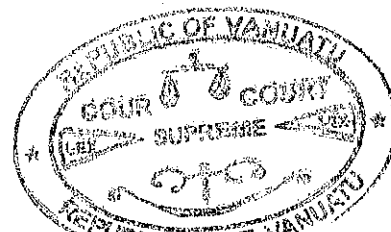
ORAL RULING

1. This bail application was initially heard last Thursday 17 March 2016 at 4 pm and a number of submissions were made both in writing and orally but the application was adjourned until 4 pm today the 22nd of March so that Mr Blessing could file two further sworn statements and Mr Bal could file two in reply.
2. As a result we now have sworn statements from John Edmanley, a Senior Police Officer, holding the rank of Chief Inspector, and Helen Taiki who is, or at least until recently has been, the defendant's girlfriend and who is a prosecution witness. In response to her statement both Mr Bal and Mr Winslett himself have filed statements.
3. As I have observed to Mr Bal he should not strictly speaking be appearing as counsel in a contested matter where he has filed a sworn statement because he cannot be counsel and witness.



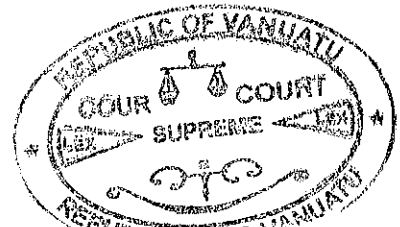
However, in these circumstances I have read his statement and take it into account and I have permitted him to remain as counsel so as to avoid a delay in this bail hearing by requiring someone else to appear. I note that Mr Winslett has been in custody for about three weeks since the 3rd of March and that it is about two weeks since he made his application.

4. The first thing to note is the stage at which proceedings are. My understanding is that this application has been made under section 60 (3) of the Criminal Procedure Code following the refusal of bail by a Magistrate on the 3rd of March. I also understand that Mr Winslett is due to appear again tomorrow in the Magistrates Court at 3:30 pm. I gather the police have not yet filed their statements and therefore the preliminary enquiry hearing will not take place tomorrow and there will be a further remand within that Court for that purpose.
5. Because this bail application has been made at such an early stage it is more difficult than usual to make an assessment of the strength of the case which Mr Winslett faces. It is of course fundamental that any defendant who is applying for bail before charges have been determined is presumed to be innocent. The issue therefore is whether a presumptively innocent defendant must be remanded in custody; if that is not required then he should be granted bail.
6. The Court's approach on any bail application is primarily to consider three risk factors which may apply if the defendant is granted bail: whether there is a risk of the defendant not attending



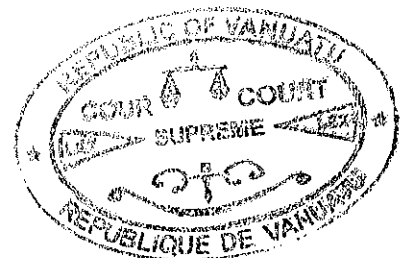
Court; whether there is a risk of his interfering with witnesses or the prosecution investigation; and whether there is a risk of further offending. And if any of those risks are present then the Court needs to consider how great those risks are and whether bail conditions might reasonably be expected to meet those risks. If they can be met then bail must be granted on those conditions. If they cannot then a remand in custody will follow.

7. In addition to those three risk factors the Court, despite the presumption of innocence, is entitled to consider the strength of the prosecution case so far as it is possible to ascertain it at the outset of a case. As I say that is not easy at this stage because there are no statements. However, based on Mr Blessing's submissions and the sworn statement of Inspector Kalman who has filed a statement for bail purposes there does appear to be a strong circumstantial case. Mr Winslett is charged, or is to be charged, with possession of cannabis and with cultivation. The cultivation was apparently at his home address and the police found, on a search under warrant, a reasonably sophisticated hydroponic cannabis growing operation. They believe the substance that has been seized was cannabis and it weighed 20 kg. They also found over 30 pot plants containing plants believed to be cannabis.
8. So that gives rise to a strong circumstantial case because its cannabis found at the home of Mr Winslett and while there is no direct evidence as I understand it of sales, such as accounts or tick lists or cash, the volume of cannabis allegedly involved and the investment in the equipment suggests a commercial element. One

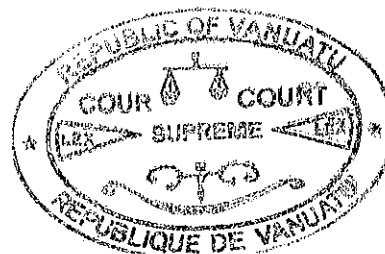


would not normally expect a person investing that amount of time effort and money to be doing it just to grow cannabis for personal use. Normally a person would be looking for a return on that investment through sales and profits gained from them.

9. The leading sentencing guideline case is Wetul v. PP [2013] VUCA 26. Following that, a case like this would, were Mr Winslett to be convicted, likely attract a starting point of around 2 to 4 years imprisonment. The personal circumstances of any convicted drug offender are not usually given much weight in sentencing apart from a guilty plea.
10. So in summary this appears to be a strong circumstantial case and if he is convicted Mr Winslett could expect a prison sentence somewhere between 18 months to 3 years even if he pleads guilty, and it is unlikely that that would be suspended.
11. The prospect of conviction here is further enhanced by the evidence about his previous convictions for drug offending in Australia as detailed in Mr Edmanley's statement. While I note that the penalties imposed were relatively modest there were offences by way of possession of tainted property, possession of property suspected of being used in the connection with the commission of a drug offence, cultivation of cannabis and supplying of a prohibited drug. The fact that Mr Winslett committed those offences makes it more likely that he committed the current offences because he has been involved with cannabis before, although it is 15 years ago, and it would not therefore be such a surprise if he were now involved with it again.

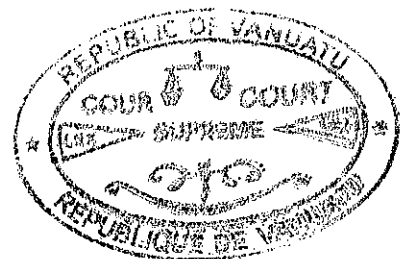


12. I turn now to consider what it think is the major risk, and that is flight risk as we call it, the risk that if Mr Winslett is granted bail he would not attend Court and perhaps try to leave the country. There is in my view a significant flight risk in this case. He is an expatriate Australian and even though he has lived here for about 15 years, he will if convicted be facing a reasonably significant jail sentence. So there is a good incentive for anybody in that position to try to avoid facing the consequences by not turning up at Court and to try to return to his country of origin. Also, he has an association with a maritime industry, having been employed for the last five years as Manager of the Big Sista. One would expect that he has therefore connections which might assist him with escaping the jurisdiction over the seas.
13. Mr Winslett has offered to surrender his passport but I do not consider that would ensure that he does not attempt to leave Vanuatu. That concern is reinforced by the other convictions that he has. In Australia, he has convictions for dishonesty namely possession of goods reasonably suspected of being stolen, opening a bank account in a false name, and possession of false driver's license.
14. On top of that he has got a significant dishonesty conviction here in Vanuatu, in 2002, of making a false declaration to the Principal Immigration Officer with the intention of deceiving him and inducing him to issue him with a permit to reside in Vanuatu. That was an offence against section 76 of the Penal Code which carries three years imprisonment. The false information that was

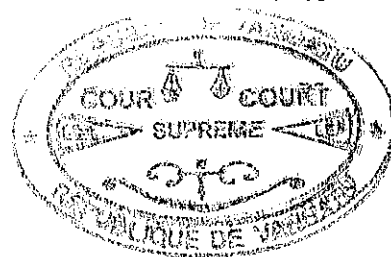


given by Mr Winslett was that he had no previous convictions whereas of course he had a number of them. They included drug offences which would if disclosed almost certainly have prevented his coming into Vanuatu. No doubt that is exactly why he did not disclose them.

15. I note that the Chief Justice sentenced Mr Winslett to three months imprisonment and declined to suspend that sentence. He also recorded that the defendant was a drug addict who had come to Vanuatu as a curing destination for his drug problems.
16. So Mr Winslett is a person who at least had a drug addition, he has a number of convictions relating to drugs and he has a number of convictions relating to dishonesty. In these circumstances the Court simply cannot be confident that if he were granted bail , regardless of the conditions that he is the sort of person who would respect those conditions and comply with them, in particular by coming to court when directed. In my view that is sufficient to cause the bail application to be dismissed, and I dismiss it accordingly.
17. I therefore will not discuss in any great detail the other two risks but I will mention them briefly. There does not seem to a particular concern here about further offending, although any person who has offended on a number of separate occasions in the past, as Mr Winslett has even if it is quite some years ago, is quite likely to do so again.

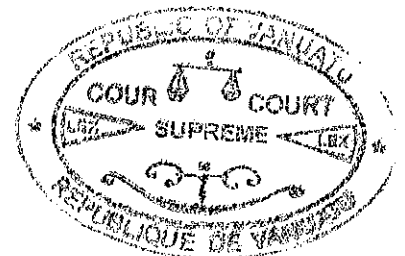


18. The greater concern is the risk of interference with prosecution witnesses and particularly an important prosecution witness namely his girlfriend or former girlfriend, Ms Taiki. As I indicated earlier to counsel I do not propose to place weight on the comments that she makes about the alleged conduct of Mr Bal and Mr Winslett's brother Justin. If they have done anything inappropriate by way of attempting to persuade her to give evidence of a false nature or dissuade her from giving evidence at all, then the police can take action in respect of them, but I do not see that that should be held against Mr Sean Winslett in his bail application. He has been in custody and there is nothing to link him to anything that Mr Bal or his brother may have done. So even if her evidence was unchallenged, it is I think irrelevant to bail because this is alleged interference which has occurred when Mr Winslett is in custody, so it can occur whether he is in custody or he is not. Any such interference might continue regardless of whether bail is granted.
19. That said, if anyone associated with Mr Winslett has been or is inclined to try to influence this prosecution that would be a very serious criminal offence for which they could be prosecuted and any conviction would almost certainly result in a prison sentence.
20. But leaving aside the alleged conduct of Mr Bal and Mr Justin Winslett, and I should record that Mr Bal in his statement has rejected any criticism and explained what he did when he was talking to Ms Taiki, I accept that she is likely to be an important prosecution witness. There is therefore a considerable incentive given the prospect of a prison sentence for Mr Winslett to



dissuade her from giving evidence against him. He may not have done anything yet in that direction but there is clearly a risk he will if he is bailed. It would be difficult to address that risk by conditions, though not impossible.

21. The circumstantial evidence appears strong here, but if she is able to say that Mr Winslett has been smoking and/or selling cannabis that obviously that would add weight to the prosecution case, so there is a risk that she could be interfered with. As I have already noted, Mr Winslett is somebody who has been prepared to act contrary to the criminal law in a number of different ways in the past so I cannot be confident that he would not do it again when his personal liberty is at stake.
22. For these reasons the bail application is declined. I do not need to remand Mr Winslett in custody formally because he is already remanded in custody to appear before the Magistrates' Court tomorrow. The learned Magistrate will no doubt take this decision into account in deciding his remand status at the conclusion of tomorrow's hearing.
23. I should record that if there is a *material* (and I emphasise the word material) change in circumstances in relation to bail then a further application may be made in future. However, addressing the risks and concerns that I have identified may be difficult with events that transpire from now on, given that they are primarily based on Mr Winslett's previous convictions which will not go away.



Dated at Port Vila this 22nd day of March 2016

BY THE COURT

Sepe Arutani

SM HARROP

JUDGE

