

BETWEEN: PUBLIC PROSECUTOR

AND: ESROME LOUGHMANI
Defendant/Applicant

Coram: Justice Oliver A. Saksak

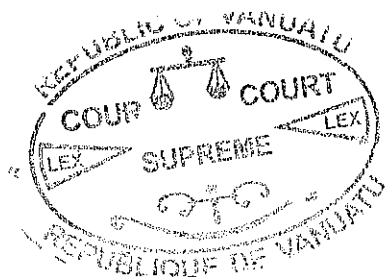
Counsel: Mrs Mary Grace Nari for Defendant/ Applicant
Mr Josiah Naigulevu, Public Prosecutor as Respondent

Date of Hearing: 5th June 2024

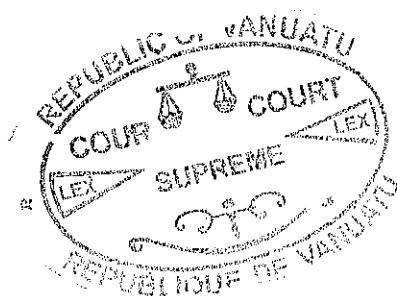
Date of Judgment: 5th June 2024

RULING ON APPLICANT'S BAIL APPLICATION

1. The defendant was sentenced after his conviction on 24th May 2024 to 3 years imprisonment.
2. Under his Warrant of Commitment dated 24th May 2024 his 3 years sentence is effective from 6th June 2024 at 3 O'clock pm when he is to present himself to Corrections.
3. The period of 14 days is available to the defendant under section 50 of the Penal Code Act [Cap 135].
4. Before the period of 14 days expire, the defendant filed an application seeking bail on 31st May 2024 on an urgent basis. The application is made pursuant to section 209 (1) of the Criminal Procedure Code Act [Cap 136].
5. The grounds are set out in the application itself as supported by sworn statements of the defendant himself and of Anderson Loughman, the brother.
6. One of the grounds is the Notice and Grounds of Gross Appeal of the defendant filed on 27th May 2024.



7. The Public Prosecutor opposed the bail application on the basis of the case authorities of PP v Walker [2007] and PP v Gilstrap [2009] and submitted that the defendant's appeal has no likelihood of success, that his sentence is likely to be served completely before the appeal is heard and that there are no reasons or circumstances for bail to be granted.
8. After hearing Counsel I reserved my decision in order to consider the submissions and peruse the cases referred to me further. Mrs Nari handed up a copy of the Court of Appeal in CRAC 21/4193 of Li Jianjun v PP [2021] which assisted me greatly in determining whether I should grant bail to the defendant and applicant.
9. And I am persuaded by what the Court of Appeal said in Li Jianjun's case that bail should be granted to the defendant pending the determination of the State's appeal and his appeal, otherwise termed as " Cross-Appeal"
10. The allowance of a period of 14 days under section 50 of the Penal Code Act to the defendant becomes an exceptional circumstance for the defendant. Whilst he stands convicted and sentenced, his sentence is not effective until 3:00pm on 6th June 2024. In reality the defendant is not yet in custody on remand. If he was, bail may not be appropriate. But as he is still currently on bail, he seeks by his application that he should continue to remain on bail in the technical sense. Legally it is my view that circumstance makes his application exceptional to be granted bail.
11. The defendant's appeal is against his conviction in respect of the charge in Count 3, [obtaining money by deception] asserting a miscarriage of justice. He exercised that right of appeal within the 14 days period allowed under section 50 of the Penal Code whilst not in custody and not under any warrant of arrest or remand, there is clear discretion on the judge or the Court to not enforce his imprisonment sentence until his appeal is heard and determined.
12. Accordingly I allow the application by the defendant to extend his bail pending the determination of the State's appeal and the defendant's appeal. I treat the application as a request for extension of bail pending appeal, instead of it being an application for bail because he is currently on bail.



13. The consequential effect of this decision is that the warrant of commitment dated 24th May 2024 in the final sentence of the warrant is vacated and substituted as follows:

“ Provided that where there is an appeal by the State or the defendant, this sentence shall not be enforced and the defendant shall continue to be remanded on bail on existing conditions until, the appeal or appeals are heard and determined by the Court of Appeal.”

DATED at Port Vila this 5th day of June 2024

BY THE COURT



Hon. Oliver A Saksak

Judge

