

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

**Criminal Case No. 24/2080**

**BETWEEN: JOHN VANUSOKSOK**  
Applicant

**AND: PUBLIC PROSECUTOR**  
Respondent

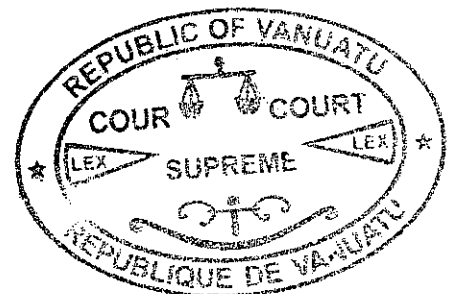
*Date of Hearing:* 16 July 2024  
*Before:* Justice M A MacKenzie  
*Counsel:* Mr. K. S. Amos for the Applicant  
Ms. M. Taiki for the Respondent

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**DECISION AS TO BAIL**

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1. Mr Vanusoksok makes an urgent application for bail. The application is supported by 2 sworn statements. There is a statement filed by Mr Vanusoksok and a statement from Victorine Carlo, Mr Vansoksok's mother and surety.
2. Mr Vanusoksok is currently remanded in custody. The Prosecutor attached a Draft Information to her bail submissions. The Draft Information contains 7 charges. There are 4 charges of sexual intercourse without consent contrary to s 97(1) of the Penal Code, 2 charges of Acts of Indecency with a young person contrary to s98A of the Penal Code, and a charge of domestic violence contrary to ss 4 and 10 of the Family Protection Act.
3. There is to be a Preliminary Inquiry in the Magistrate's Court on 22 July 2024. If committed to the Supreme Court, I was advised that the likely date for plea is 20 August 2024.



## Result

4. After hearing oral submissions from counsel, I declined to grant Mr Vanusoksok bail. I said I would give written reasons. These are my reasons.

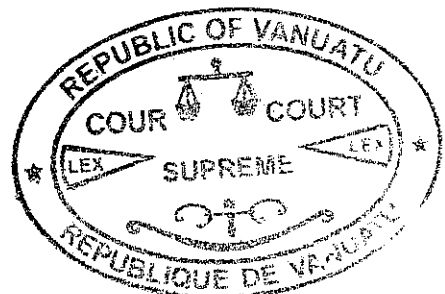
## The alleged circumstances

5. It is alleged that Mr Vanusoksok perpetrated various sexual acts on his biological niece, aged 11 years. The alleged sexual acts include penile penetration, oral penetration and indecent acts on the child complainant, and which occurred between March and April 2024 in Port Vila.
6. In a sworn statement dated 15 July 2024, the complainant's father alleges that Mr Vanusoksok made threats to his daughter during the alleged abuse.

## Relevant statutory provision and applicable legal principles

7. Bail is to be considered under section 60 of the Criminal Procedure Code. In this case, because the charges of sexual intercourse without consent carries a penalty of life imprisonment, section 60 (1) and (3) apply. Section 60 (3) is an exception to Section 60 (1), but gives no guidance as to the applicable principles.
8. Section 60 (1) provides that a person charged with an offence with a penalty of life imprisonment is ineligible to be granted bail. However, Section 60 (3) provides a gateway for bail in such a case
9. In *Public Prosecutor v Whitford* [2006] VUSC 36 the Court said that for the exception in s60(3) to apply there must be special or good reasons on which the Court is satisfied to grant bail and made pertinent observations about what evidence is required when s60(3) applies (at 12) :

*"When an application is made under Section 60 of the Criminal Procedure Code for someone who has been charged with an offence carrying a maximum term of life imprisonment, it is in my view essential that the applicant comes with good evidence to persuade the Court that his situation is special or such that the Court has to invoke Subsection 3. It is trite law that what is said from the bar table (said by lawyers) is not evidence to support a proposition or an application that is before the Court. It is duty of the applicant to come to Court with all relevant evidence to support his application or proposition."*

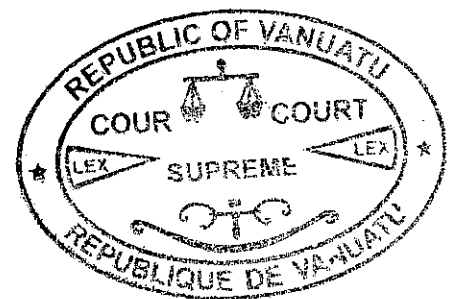


10. Consistent with *Whitford*, I consider that for the exception in s 60(3) to apply, there must be special or good reasons for bail to be granted, when s60(1) and (3) are read together. The starting point is that a person accused of an offence punishable by life imprisonment is ineligible for bail. The rationale for s60(1) must presumably be to reflect Parliament's intention that liberty of an individual is appropriately curtailed when alleged offending falls into the most serious category. If immutable though, it could be thought to be draconian and inconsistent with Article 5 of the Constitution and in particular, the presumption of innocence.
11. If s60(3) is interpreted from its text and in light of its purpose, bail can be granted by the Supreme Court, when a person is accused of an offence punishable by life imprisonment. It involves the exercise of discretion. It must reflect Parliament's intention to ensure there is an exception so that bail can be granted in such circumstances. Otherwise, issues of unconstitutionality might arise. I consider then that the starting point in considering whether to grant bail where s60(3) applies must be the ineligibility for bail under s60(1). That suggests, consistent with *Whitford*, that there is high bar or hurdle for an applicant to overcome; that is to say special or good reasons.

### **Submissions regarding Bail**

#### **Defence position**

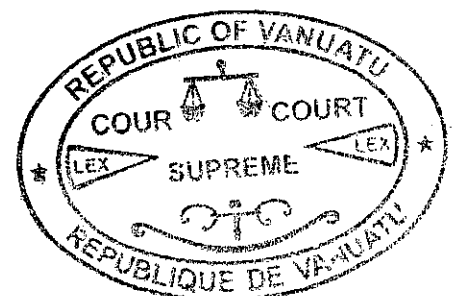
12. Mr Vanusoksok's personal circumstances are that he is aged 30 years. He does not ordinarily live in Port Vila. He came to Port Vila because he was ill and was staying with a relative at Freshwater at the time of the alleged offending. Mr Vanusoksok is from Malekula. His wife is from Ambrym and most of the time they live on Ambrym, but sometimes come to Port Vila.
13. He is employed. He works for Esah Corporation, and being remanded in custody has affected his employment.
14. Mr Vanusoksok has 3 children and supports them financially. His partner is an RSE worker, currently overseas. According to Mr Vanusoksok, his partner is in Australia but other than that, cannot provide any more specific detail as to where she is working in Australia.
15. Mr Amos highlights that Mr Vanusoksok has been remanded in custody since 4 June 2024, and is presumed innocent until proven guilty under the Constitution.
16. Mr Amos submits that Mr Vanusoksok should be granted bail, so that he can prepare for trial. The bail proposal is for Mr Vanusoksok to live at Erakor Village with his mother. It is a sufficient distance from where the complainant lives in Bladinier Estate, being approximately 16 km away. He is a mature man who understands bail conditions and will abide by the bail conditions detailed in the application for bail.



17. Mr Amos submits that when the 6 factors identified in *Public Prosecutor v Festa* [2003] VUSC 65, as relevant to bail are considered, the risks are low.
18. In particular, any risk of failing to appear, interfering with witnesses, or offending is low. But if the Court assesses there are any risks, they can appropriately be managed by bail conditions. Counsel also points to the fact that the police investigation has been completed.

### **Position of the Public Prosecutor**

19. Ms Taiki filed very helpful written submissions. The Prosecutor opposes bail, while acknowledging the rights and freedoms under Article 5 of the Constitution, including the presumption of innocence. Ms Taiki submits that while these fundamental rights and freedoms are in Mr Vanusoksok's favour, they are not absolute and conclusive; *Public Prosecutor v William* [2019] VUSC 10. What is required is an evaluation of risks.
20. The opposition to bail is mainly based on the primary risk factors. The Prosecutor submits that there is a flight risk and a risk of interference with the complainant.
21. In terms of flight risk, Mr Vanusoksok came to Port Vila because he was ill and the prosecution are concerned there is a risk he will return to the islands.
22. The Prosecutor submits there is a real risk of contact, directly or indirectly with the complainant and prosecution witnesses. The investigation is complete but the complainant and prosecution witnesses are close relatives which may create a risk of contact even if Mr Vanusoksok is living in Erakor Village. Further, the complainant is fearful for her safety since the allegations were reported. If proved, her fear has a credible basis, as it is alleged that Mr Vanusoksok made threats to her during the alleged sexual abuse.
23. Ms Taiki submits that Mr Vanusoksok has not given any reasons or circumstances as to why he should be released on bail, having regard to *Public Prosecutor v Whitford*. Although he says that he supports his children financially, and that his partner is a RSE worker who is overseas, he has not provided any evidence about his circumstances.
24. The Prosecutor notes that in the sworn statement of Brant Brani, there is an assertion that the children are looked after by their grandparents on Ambryn Island and that Mr Vanusoksok's partner is still in Port Vila and has not travelled overseas as yet.
25. Ms Taiki also relies on the serious nature of the offences, and the strength of the prosecution case, along with the risk issues raised.

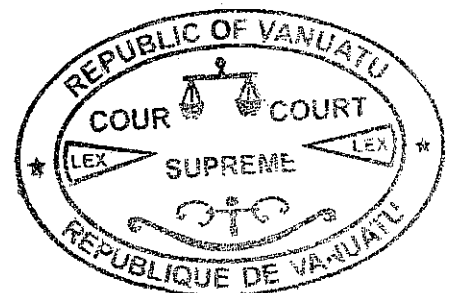


## Factors relevant to the assessing Bail

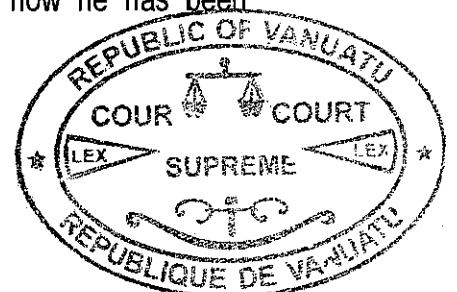
26. There are a number of factors which inform whether bail should be granted. They are distilled from various cases, including;
- a. *Public Prosecutor v Festa* [2003] VUSC 65
  - b. *Leo v Public Prosecutor* [2013] VUSC 203
  - c. *Manipen v Public Prosecutor* [2013] VUSC 177
  - d. *Reno v Public Prosecutor* [2015] VUSC 180
  - e. *Public Prosecutor v William* [2019] VUC 10
27. The primary factors are risk issues. Is there a risk that Mr Vanusoksok will fail to attend Court, interference with witnesses or evidence, or offend if granted bail. Other relevant factors include the seriousness of the alleged offence, the presumption of innocence, the nature and quality of the evidence, the stage of the investigation and Mr Vanusoksok's personal circumstances. This is a non-exhaustive list of factors.
28. It is a matter of balancing and weighing all relevant considerations but particularly the risk factors in order to assess whether bail should be granted. Prior to a Preliminary Inquiry there will always be a tension between the presumption of innocence and other relevant considerations.

## Decision

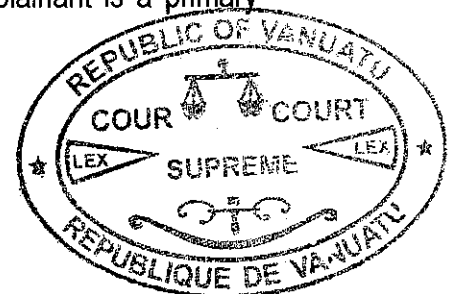
29. Should Court exercise its discretion to grant bail? The following factors are relevant: -
- a. The alleged offending is very serious. However, with reference to *Public Prosecutor v Jeajea* [2016] VUSC 159 and *Public Prosecutor v Borenga* [2023] VUSC 167, the seriousness of the offending alone is insufficient to overcome the presumption of innocence, a right enshrined under the constitution.
  - b. The presumption of innocence is a right enshrined by Article 5 of the Constitution. There is also the right to liberty, the right to the protection of the law and freedom of movement. I accept they are fundamental rights and freedoms, but in the context of bail, they are not absolute; *Public Prosecutor v William* [2019] VUSC 10.



- c. I consider that Mr Vanusoksok is a flight risk. He proposes to live with his mother in Erakor Village. He does not ordinarily live on Efate though. He is from Malekula, but mostly lives on Ambrym Island. His children are on Ambrym Island, and his partner, at least according to Mr Vanusoksok is in Australia. The Prosecutor has information that his partner is still in Port Vila. It is unnecessary for me to resolve this factual dispute, but it is curious that Mr Vanusoksok apparently is unaware of his partner's whereabouts in Australia
- d. Mr Vanusoksok has no meaningful ties to Efate given the family circumstances I have outlined. The complainant's father asserts that a relative had recently offered to pay Mr Vanusoksok's fare back to Malekula. Having regard to the information before the Court, I assess there is a real and credible risk of flight.
- e. There is a real risk of interference with witnesses, even though the investigation is complete. The risk of interference does not relate only to the risk of interference with the investigation; *Public Prosecutor v Winslett* [2010] VUSC and *Public Prosecutor v William* [2019] VUSC 10.
- f. The complainant is vulnerable because of her age and the allegation that threats were made to her. She and Mr Vanusoksok are related, as are other prosecution witnesses. There is then a risk of contact, as Mr Vanusoksok will likely be aware of places where the complainant and her family might be and could easily seek them out. In another jurisdiction, this is considered to be a relevant consideration, particularly in assessing proximity issues; see *Kohu v Police* [2018] NZHC 3364.
- g. The Court is concerned about the distance between where the complainant lives and Erakor Village. It is approximately 16 km. There is no brightline test as to what distance is suitable to mitigate any identified risk. It will always be fact specific. Here, there is serious alleged sexual offending by a family member against a vulnerable child, who is fearful, and there were alleged threats made during the sexual abuse. Accordingly, I assess that the proposed address in Erakor Village is not far enough away from Bladinier Village, where the complainant lives. I assess then that there is a real and credible risk of interference with witnesses for the reasons set out above.
- h. There is no issue raised as to the possibility of offending if bail is granted.
- i. One of the reasons for a grant of bail is so that Mr Vanusoksok can support his children, as his partner is an RSE worker based overseas, noting though that the Prosecutor has contrary information. The children live on Ambrym Island with their grandparents so are not currently in Mr Vanusoksok's care. The need to financially support children could potentially be a good reason, but there is no evidence at all before the Court about the children's circumstances and how he has been supporting them or proposes to support them.



- j. It was submitted that another reason for bail to be granted is so that Mr Vanusoksok can prepare for trial. I acknowledge that is a matter of fundamental fairness but there is no evidence before the Court to suggest that if remanded in custody that he will have difficulties with trial preparation, and notably he is represented by counsel.
- k. As noted above, where s60(3) applies there is a high bar or hurdle for the applicant to overcome. There must be a special or good reason for bail to be granted. There is no proper evidential foundation here to show that there is a special or good reason for bail to be granted.
- l. The Prosecutor submits that the prosecution case is strong, taking into all the information available to the prosecutor, which includes the complainant's statements, the prosecution witnesses, the medical report, and the crime scene album. That might be so, but I am not able to assess that, as none of that information is before me. However, the Preliminary Inquiry is to take place next week and if the case against Mr Vanusoksok is as strong as indicated, then it is likely he will be committed to the Supreme Court for trial, with a likely plea day (according to the Prosecutor) of 20 August 2024. If found guilty, then he will be sentenced to a very lengthy term of imprisonment.
30. Can bail conditions mitigate the identified risks to an acceptable level so that bail can be granted? The 2 key risks are that Mr Vanusoksok is a flight risk and the risk of interference with the complainant and prosecution witnesses.
31. Bail conditions will not meet the risk that Mr Vanusoksok might leave Efate. He does not have any meaningful connection to Efate for the reasons outlined. He will by now know how serious his situation is, which might incentivise him not to appear in Court, particularly as the Preliminary Inquiry is a matter of days away.
32. Nor do I consider that bail conditions will mitigate the risk of interference. The complainant and her immediate family are related to Mr Vanusoksok. He may well know places they may go. There would be nothing to stop him from going to such places or making contact with the complainant, if he was so minded. His mother cannot supervise him at all times. That is unrealistic.
33. A key consideration is that the complainant is a child, vulnerable because of her age and is fearful of Mr Vanusoksok. While untested, the Court is concerned about the alleged threats made to the complainant. If proved, there is a rational basis for the complainant's concerns. I consider that given the family relationship between the complainant and Mr Vanusoksok, the need to protect the complainant is a primary factor.



34. I acknowledge the presumption of innocence. It is the cornerstone of a credible and effective system of justice. It is enshrined in the Constitution. While the alleged offending is very serious, I do not place significant weight on that factor, other than it may incentivise non appearance in Court.
35. Here, 2 of the 3 primary the risk factors are engaged, and for the reasons set out above, I do not consider that bail conditions will mitigate the risks to an acceptable level so that bail can be granted. I am very concerned that Mr Vanusoksok is a flight risk. Bail conditions cannot realistically address that risk. There is a credible risk of interference with the complainant and the witnesses, and given the family relationship here, a primary factor is the protection of a vulnerable complainant.
36. Also, as detailed above, Mr Vanusoksok has not provided any evidence to suggest a special or good reason for bail to be granted, given s60(1) and (3). The Preliminary Inquiry is a matter of days away, so delay does not weigh heavily in the balance. Taking all the relevant factors together, and weighing and balancing them against the presumption of innocence, in this particular case, the presumption of innocence does not weigh in favour of bail being granted.
37. Bail is therefore declined.

**DATED at Port Vila this 16th day of July 2024  
BY THE COURT**

*name*  
.....  
Justice M A Mackenzie

