

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

**Criminal**  
**Case No. 22/96 SC/CRML**

**PUBLIC PROSECUTOR**

**v**

**ESROME LOUGHMANI**

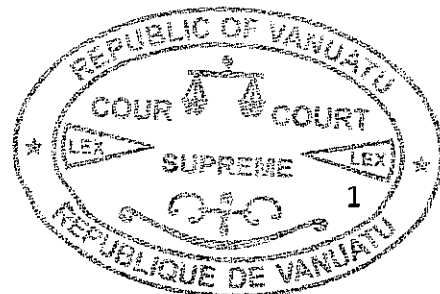
*Date of Hearing:* 30 October 2024  
*Before:* Justice V.M. Trief  
*In Attendance:* Public Prosecutor – Mr T. Karae  
Defendant – Mrs M.G. Nari; Defendant present

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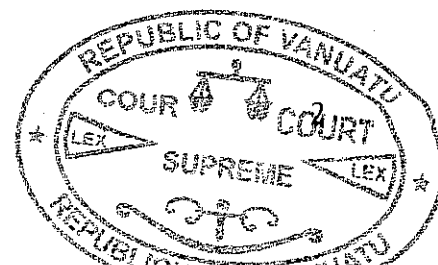
**DECISION AS TO URGENT BAIL APPLICATION**

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1. The trial judge in this matter is Saksak J. He is on Court tour inter-island hence this matter was referred to me to hear the Urgent Bail Application filed on 28 October 2024 (the 'Application').
2. The Application is made pursuant to s. 50 of the *Penal Code* [CAP. 135] and subs. 209(1) of the *Criminal Procedure Code* [CAP 136].
3. Section 50 of the *Penal Code* provides as follows:
  50. *If the offender has not been held in custody pending trial and no warrant of arrest or remand is issued against him or her at the time of conviction in the circumstances authorised by the rules of criminal procedure, no sentence of imprisonment may be enforced until the time of appeal against such sentence has expired or the offender earlier elects to begin serving his or her sentence.*



4. Subsection 209(1) of the *Criminal Procedure Code* provides as follows:
  209. (1) *After the entering of an appeal by a person entitled to appeal, the trial court which convicted or sentenced such person may order that he be released from custody on bail subject to such conditions as the court may consider fit.*
5. The Application was opposed.
6. Sentence was delivered on 18 October 2024. The Defendant Mr Loughmani has filed a notice of appeal against his sentences of imprisonment, which took immediate effect.
7. It is common ground that Mr Loughmani has not served any time in custody since charges were first brought against him until he entered custody on 18 October 2024 following the delivery of sentence. Previously, sentence was delivered in this matter. This was set aside on appeal. In that sentence, s. 50 of the *Penal Code* was applied so that Mr Loughmani had the right to 14 days before the sentence was enforced or unless he earlier elected to begin serving his sentence. A warrant of commitment was signed. Mr Loughmani then applied for bail. When bail was granted, the warrant of commitment was also suspended. Counsel informed me that as a result, Mr Loughmani had not served any time in custody prior to 18 October 2024.
8. It is also common ground that when sentence was delivered on 18 October 2024, Mr Loughmani's right under s. 50 of the *Penal Code* was not explained to him. It follows that he was not given the opportunity to elect if he wished to start serving his sentence before the 14-day appeal period had expired.
9. The words of the Court of Appeal in *Li Jianjun – Bail Judgment* [2022] VUCA 20 at [14]-[15] are apposite to the present matter:
  14. *Further, no election, in our view, can be effectively made until the offender is informed of the need to and understands the nature of the election. There is nothing on the record to indicate that this was done and all counsel agree that, in fact, no explanation was sought or given. It might be fair to conclude that the provisions of section 50 of the Penal Code took present counsel somewhat by surprise.*
  15. *It is, in our view, exceptional that a sentence is imposed without regard to a significant provision giving rights to an offender that he should have explained to him or her.*
10. I now turn to consider whether Mr Loughmani is a suitable candidate for the grant of bail pending appeal, which appeal I am informed will be heard in the February 2025 session of the Court of Appeal.
11. I note that Mr Loughman was on bail from August 2021 to 18 October 2024 and complied with his conditions of bail throughout that period of over 3 years. I therefore assess the risk of him offending whilst on bail as low. I also assess the risk of him



not attending Court when his matter is listed as low. The risk of interference with Prosecution witnesses is no longer relevant.

12. For the reasons given, I **granted** the Urgent Bail Application on the conditions set out in para. 11 of the Application.

**DATED at Port Vila this 30<sup>th</sup> day of October 2024  
BY THE COURT**

*V.M. Trief*  
Justice V.M. Trief

