

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

Criminal Case
Case No. 24/2026 SC/CRML

BETWEEN: PUBLIC PROSECUTOR
Claimant

AND: SABRINE IAPUT
Accused

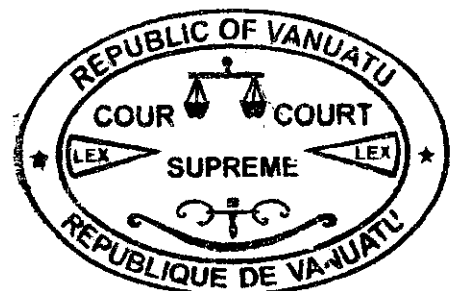
Date of Hearing: 5 July 2024
Before: Justice M A MacKenzie
Counsel: Mr. T. Karae for the Public Prosecutor
Mrs. M. Markward for the Accused

DECISION AS TO BAIL

1. Ms. Iaput makes an urgent application for bail. The application is supported by 4 sworn statements. There is a statement filed by the defendant, statements from her 2 brothers and a fourth statement from Ms. Iaput's uncle chief.
2. Ms. Iaput is currently remanded in custody on a holding charge of intentional homicide laid under section 106 (b) of the Penal Code. A charge laid under section 106 (b) carries a penalty of life imprisonment.

The alleged circumstances

3. It is alleged that Ms. Iaput struck her deceased husband to the head three times using a piece of timber.
4. Today I have further information about the circumstances. This information is detailed in Mr. Karae's written submissions.



- a. *The alleged offending happened in the family home. The children were in the house, the eldest was seen on the floors with her siblings and she was crying. The eldest is potential witness to this allegation, as she was in the house when the alleged incident occurred. The investigation has yet to take her statement.*
- b. *She was cautioned and interviewed on the 19th June 2024, the accused said, the deceased came home and was drunk. When the deceased woke up, according to the accused, the deceased took her into the room to have sex but she was on her period. She said she undressed and the deceased undressed himself. The accused then laid down on his right side and told the accused to take this piece of wood and hit him in the head. The accused continued that if she doesn't then the accused he will kill them. The accused said she picked up the piece of wood and hit him three times in the head.*
- c. *Prosecution has been in contact with the family of the deceased. The spoke person of the family is a witness by the name of Abel Nako. He has confirmed that the accused is not at risk if she was allowed granted bail.*

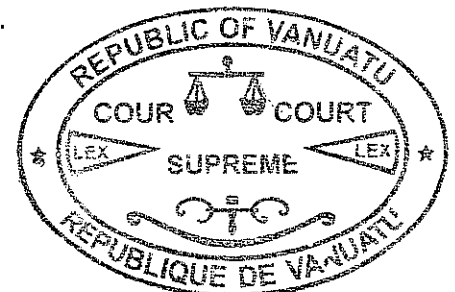
Relevant statutory provision

5. Bail is to be considered under section 60 of the Criminal Procedure Code. In this case, because the charges 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. I will return to this point.

Submissions regarding Bail

Defence position

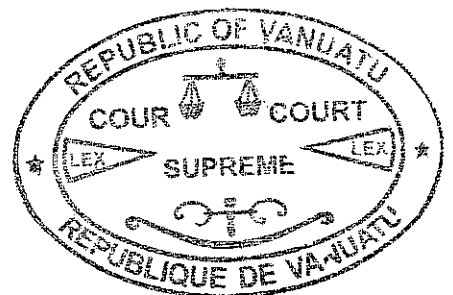
6. Mrs. Markward submits that Ms. Iaput should be granted bail. Ms. Iaput is aged 24 years and has four children ranging in age from 10 years to 17 months. The three older children are being currently being cared for by the deceased's family. The baby has left Efate and has gone to Tanna Island with the deceased's family.
7. Mrs. Markward filed written material and also made oral submissions. She submits that Ms. Iaput is not a flight risk. She has a permanent home address at Etas area, Port Vila. She proposes to live in North Efate at Forari Settlement with her older brother. She has offered her family as sureties, as detailed in their sworn statements.



8. Mrs. Markward submits that there is no risk of interference with state witnesses and that there is no suggestion that there is a risk of offending if bail is granted. Ms. Iaput has no criminal history and any concern as to offending could be met by a strict condition not to commit any offence on bail. If she did, then Ms. Iaput would be arrested.
9. As already noted, Ms. Iaput has four children and until her arrest, Ms. Iaput was the children primary caregiver, according to the submissions made by Mrs. Markward. As such, a plank of the bail application is that the children need her.
10. While Counsel acknowledges the serious nature of the alleged offending, Mrs. Markward emphasizes that Ms. Iaput, in accordance with the constitution, is presumed innocent.
11. Mrs. Markward submits the fact that the Prosecution has not completed its investigation is not an impediment to bail being granted. As Trief J. said in *Public Prosecutor v Borenga* [2023] VUSC 167, an incomplete Police Investigation is not a proper ground for refusing bail, as a charge should not be laid if investigations remain incomplete.
12. Finally, Ms. Iaput can abide by the conditions suggested in the application as appropriate.

Position of the Public Prosecutor

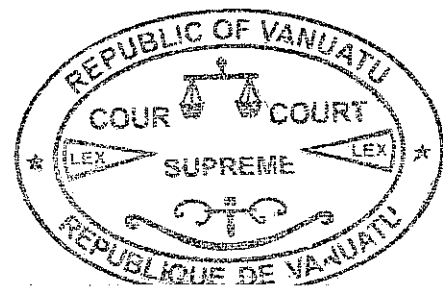
13. The position of the Prosecutor is set out in the concluding part of the bail submissions filed just prior to the resumed bail hearing. A key concern for the Prosecution is that the eldest child is a potential witness.
14. The position regarding bail may be different once the position with respect to the witnesses is clarified.
15. The grounds for opposing bail are:
 - a. *The children are potential witnesses and so there is a real risk that whilst on bail, the accused could interfere with the potential witnesses and the investigations at this initial stage. (I understand it to be the eldest child)*
 - b. *At this stage the evidence is strong, the circumstance as portrayed in the witness statement and caution statement shows two different version coming from the accused of what happened. There is a real risk that if convicted she will be imprisoned. In other words, if convicted, a lengthy term of imprisonment is almost a certainty having regard to the Court of Appeal authorities.*



- c. *The maximum penalty is life imprisonment, the Prosecution submits that the grounds for bail are not persuasive enough to invoke section 60 (3) of the CPC.*
- d. *Aside from risk- the accused was arrested and detailed on the 19th June 2024. The investigations are ongoing and yet to be complete before the 19th of July for PI at the Magistrate Court.*

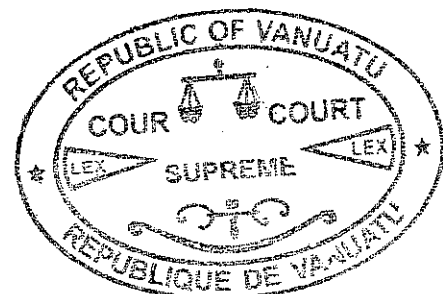
Factors relevant to the assessing Bail

16. 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
17. The primary factors are risk issues. Is there a risk that Ms. Iaput 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 Ms. Iaput's personal circumstances. This is a non-exhaustive list of factors.
18. 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. At early stages of the criminal investigation there will always be a tension between the presumption of innocence and other relevant considerations.
19. *Public Prosecutor v Whitford*; criminal case No. 42 of 2005 is also relevant, because it addresses Section 60 (3) of the Criminal Procedure Code where a person is charged with intentional homicide under section 106 (b) of the Penal Code. Section 60 (1) suggests that a person charged with an offence with a penalty of life imprisonment is not to be granted bail. However, Section 60 (3) provides a gateway for bail in such a case. Section 60 (3) is described in *Whitford* as an exception to the rules, and that for the exception in Section 60 (3) to apply there must be special or good reasons in order for bail to be granted.
20. Relevantly, the Court said that the reasons advanced, which included the facts that there were children to take care of, may well fall within Section 60 (3).



Decision

21. Should Court exercise its discretion to grant bail? The following factors are relevant: -
- a. The offence 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. There is nothing before the Court to indicate that Ms. Iaput is a flight risk. She has a permanent home and proposes to live with her brother in North Efate. She has family members who offer support.
 - c. It should be borne in mind that Ms. Iaput has no criminal history at all.
 - d. The investigation is incomplete, and so it is difficult to assess the strength of the Prosecution case. The stage of the investigation in my view, can cut both ways- it could tip the balancing scales towards a continued remand in custody, but also it could point the scales towards a grant of bail, particularly if it will take time to complete the investigation and for the procedures set out in part 7 of the Criminal Procedure Code to take place. Delay is relevant to the constitution's rights and protections of the presumption of innocence and the right to liberty.
 - e. The issue of interference is possibly engaged here. This is based on the fact that Ms. Iaput's eldest daughter is a potential witness.
 - f. As noted in *Whitford*, personal circumstances can be a good reason to grant bail in a case of intentional homicide under section 106 (b). The information before the Court is that Ms. Iaput is the primary caregiver of the four young children. If Ms. Iaput is not granted bail, the children will necessarily be cared for by other family members. They are young and vulnerable and although personal circumstances might usually carry limited weight, I consider that it is a factor weighing in the balance here given the ages of the children and that Ms. Iaput is ordinarily their primary caregiver. Even if she is unable to care for them, there should be some continuity, for the children with contact between them and their mother, at least. That is a good reason otherwise, they will have neither parent.
 - g. Of course, if there were compelling risk factors, personal circumstances might count for little. There is pause for the thought that the eldest child is a potential witness. Notably, the prosecutor does not suggest a risk of failing to attend Court or offending on bail. In terms of the primary risk factors, I accept there is a risk of interference with witnesses in the event that the eldest child is a witness. That



means that care needs to be taken in weighing whether that means that bail should not be granted, and in light of the Prosecutor's submission that the evidence appears strong. I put to one side the possibility of conflicting versions given by Ms. Iaput. That is not something that can be assessed at the bail hearing.

- h. The risk of interference can be addressed by a bail condition that Ms. Iaput is not to have contact with her eldest child until the child is interviewed. The other two important risk factors are not engaged here, Ms. Iaput has a stable address and subject to the caveat as to her child possibly being a witness, she should be able to at least see her children even if the bail conditions preclude the eldest child living with her until the child has been interviewed.
 - i. I note also that the deceased's family do not consider Ms. Iaput to be a risk.
 - j. I acknowledge that if Ms. Iaput is found guilty or pleads guilty, then she will be sentenced to a very lengthy term of imprisonment. However, for today's purposes, that fact alone does not tip the scales against a grant of bail. Given that the only credible risk factor is a possibility of interference, I consider that bail conditions can mitigate to an acceptable level any potential risk in the regard so that bail can be granted on conditions.
22. In the circumstances, I grant the Ms. Iaput bail on terms and conditions to include a condition that she is not to have contact with her eldest child until any interview with the child has been completed.
23. I consider that the preserving the children's relationship with their mother is a good reason to grant bail, in line with the observations made in *Whitford*.
24. Bail is therefore granted.

**DATED at Port Vila this 5th day of July 2024
BY THE COURT**

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Justice M A Mackenzie

