

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

Criminal Case No. 24/1479

BETWEEN: STEPHANE TETE TINNING FRANK
Applicant

AND: PUBLIC PROSECUTOR
Respondent

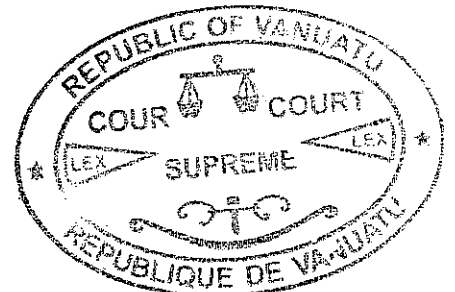
Date of Hearing: 23 July 2024
Before: Justice M A MacKenzie
Counsel: Mr. R. Tevi for the Applicant
Ms. M. Tasso for the Respondent

DECISION AS TO BAIL

1. Mr Frank makes an urgent application for bail. The application is supported by 7 sworn statements. There are 4 statements filed by Mr Frank, a statement from Mary Jane Maralau, Mr Frank's sister and surety, a statement from his partner Sandra Billi, and a statement from Rex Kalsrap, an employee of the Department of Corrections.
2. Mr Frank is currently remanded in custody. He faces 4 charges. There are 3 charges of sexual intercourse without consent contrary to s 97(1) of the Penal Code [CAP 135], and 1 charge of Act of Indecency contrary to s98 of the Penal Code [CAP 135].
3. The Preliminary Inquiry has been completed. On 15 July 2024, Mr Frank was committed to the Supreme Court. The date for plea is 20 August 2024.

Result

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



The alleged offending

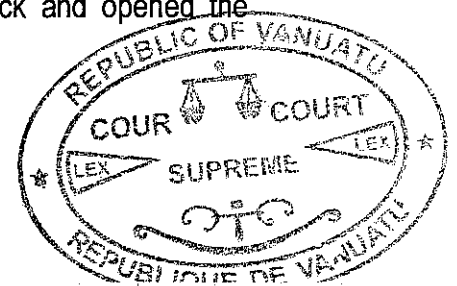
5. Mr Frank is a Police Officer in the Vanuatu Police Force (VPF) holding the rank of Corporal. He is stationed at the Freshwater station. He is currently suspended. It is alleged that Mr Frank perpetrated various sexual acts on 2 female Police Officers. Both complainants were working under Mr Frank's supervision.
6. At the time of the initial application for bail, that there were potentially 5 complainants. However, the charges relate to 2 complainants only.

Complainant One

7. The most recent incident is alleged to have taken place in the early hours of 16 March 2024. The complainant was off duty. Mr Frank was on duty. The complainant and her friends had been socialising. In the early hours of the morning, the complainant called another Police Officer to ask for a ride home. Mr Frank, who was in the Police truck, agreed to give the complainant and her friends a ride home.
8. After the complainant's friends were dropped off, Mr Frank returned to the Freshwater Station with the complainant. Mr Frank was the shift supervisor. He instructed other Police Officers to leave the station. Mr Frank is alleged to have then sexually assaulted the complainant by digitally penetrating her vagina, then forcing her to open her mouth and forcing his penis into her mouth. He ejaculated into the complainant's mouth. During the incident, the complainant was crying and tried to fight back.
9. The complainant tried to report it to the other Police Officers when they returned to the station, but she alleges that Mr Frank cut her off. She was afraid to report the incident as she felt intimidated due to Mr Frank being a senior Police Officer.

Complainant Two

10. The second complainant is also a female Police Officer. This incident is alleged to have taken place in 2020. Mr Frank was her supervisor. The complainant was on duty. Her shift finished at approximately 3 am. Mr Frank was to drive her home, and then pick up others who were due to start work.
11. First, Mr Frank pulled over to a building on the side of the road as he was driving the complainant home. He asked her to have sexual intercourse. She refused. Mr Frank got out of the Police truck and the complainant locked the door. When Mr Frank got back into the truck, the complainant perceived him to be angry. She felt afraid.
12. Instead of driving the complainant home, Mr Frank then drove into an empty field. He told the complainant to undress herself. He got out of the truck and opened the



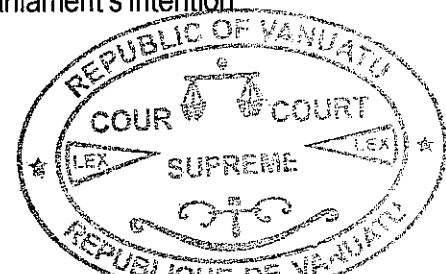
passenger door. The complainant believed Mr Frank was very angry. She was crying and scared as she was isolated and it was dark. So she removed her pants. After Mr Frank told her to kneel, he penetrated her vagina with his penis. Once he finished, Mr Frank then drove her home.

Relevant statutory provision and applicable legal principles

13. Bail is to be considered under s 60 of the Criminal Procedure Code [Cap 136] . In this case, because the charges of sexual intercourse without consent carries a penalty of life imprisonment, s 60 (1) and (3) apply. s 60 (3) is an exception to s 60 (1), but gives no guidance as to the applicable principles.
14. s 60 (1) provides that a person charged with an offence with a penalty of life imprisonment is ineligible to be granted bail. However, s 60 (3) provides a gateway for bail in such a case
15. In *Public Prosecutor v Whitford* [2006] VUSC 36 the Court said that for the exception in s 60(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 s 60(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.”

16. 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 s 60(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 s 60(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.
17. If s 60(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

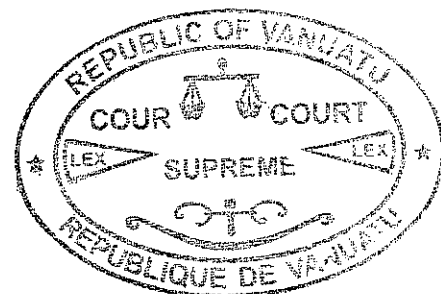


to ensure there is an exception so that bail can be granted in such circumstances. Otherwise issues of unconstitutionality might arise. I consider then that the starting point in considering whether to grant bail where s 60(3) applies must be the ineligibility for bail under s 60(1). That suggests, consistent 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

18. Mr Frank's personal circumstances are that he is aged 41 years, and is, as noted above, a Corporal in the VPF. He lives in the Freshwater area. Mr Frank has a partner who has recently given birth. His father passed away recently.
19. Mr Frank has been remanded in custody since 6 May 2024. He has sworn 4 statements. He seeks bail primarily due to threats made to him whilst in custody. The Prosecutor accepts that a person, Songi Michel, made a serious threat to Mr Frank when they were sharing a cell at the High Risk Detention Centre. They have now both been moved to the Medium Risk Centre but no longer share a cell.
20. Mr Frank's evidence is that his has been threatened by other inmates because he and his colleagues arrested them while on active duty. Specifically, deaths threats were made to him by Jean Shem, Bill David and Songi Michel.
21. Jean Shem and Bill David are alleged to have said "*I will pee on my pants and will not wake up the next morning*". In the early hours of 30 May 2024, Songi Michel is alleged to have made a death threat to Mr Frank. The threat is detailed (in Bislama) in Mr Frank's sworn statements. Mr Tevi translated the threat during the bail hearing. It includes that he will "*f... your ass and then we will kill you dead*". Mr Frank reported the threat, confirmed in the sworn statement of Rex Kalsrap. As such, Mr Tevi submits that Mr Frank should be granted bail.
22. Mr Tevi points also to other relevant circumstances. First, Mr Frank's wife has just had a baby and needs his assistance. Further, his father has recently passed away and that the family need Mr Frank's support. Mr Frank's sister is willing to support him and the bail proposal means that any risk of interference is mitigated as his sister lives in North Efate.
23. Mr Tevi submits that Mr Frank is entitled to bail. He highlights the presumption of innocence, enshrined in the Constitution. He describes the allegations as "assumptions". In his oral submissions, Mr Tevi highlighted that the factual allegations are disputed by Mr Frank. He submits that the seriousness of the offending is questionable as the facts are disputed.



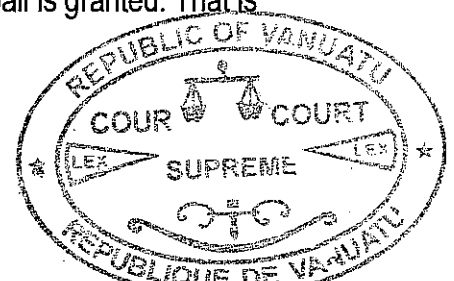
24. The defence submit that Mr Frank should be given the opportunity to be on bail. Mr Tevi submits that the Court should consider how bail conditions can mitigate risk.

Position of the Public Prosecutor

25. Ms Tasso filed helpful written submissions in respect of the initial bail application. The Prosecutor opposes bail, while acknowledging the rights and freedoms under Article 5 of the Constitution, including the presumption of innocence.
26. While the Prosecutor emphasizes the seriousness of the alleged offending, the opposition to bail is mainly based on the primary risk factor risk of interference with the complainants and evidence. In support of the bail opposition are 2 sworn statements. There is a statement filed by one of the investigating Police Officers and a statement from one of the complainants. Her statement is compelling. She is a Police Constable. She confirms that she was afraid to disclose the incidents because Mr Frank is a Senior Police Officer and a supervisor. She is concerned that he has many colleagues and friends within the VPF who could be upset and angry with her. The complainant believes that there are other alleged incidents of a similar nature involving other female Police Officers.
27. Ms Tasso acknowledges that the threat to Mr Frank did occur. However, she submits that Mr Frank's safety is not at risk. He has been separated from Mr Songi, although they are both at the same Correctional facility. Her submission is that the safety issue has been handled by the Correctional Facility.

Factors relevant to the assessing Bail

28. 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
29. The primary factor relating to bail in the present case is the risk of interference. Is there a risk that Mr Frank will interfere with witnesses or evidence, if granted bail ? Given the nature of the alleged offending, there is also the risk of offending if bail is granted. That is

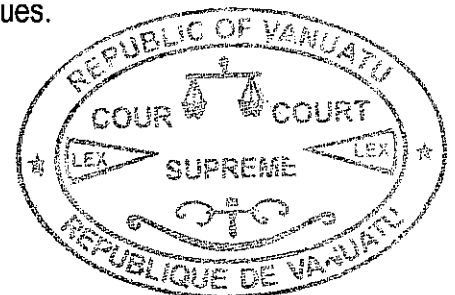


because the offending here involves 2 separate complainants who allege sexual offending by Mr Frank 4 years apart. If proved, the offending is not isolated. Other relevant factors include the seriousness of the alleged offences, the presumption of innocence, the nature and quality of the evidence, the stage of the investigation and Mr Frank's personal circumstances. This is a non-exhaustive list of factors.

30. 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. There is always be a tension between the presumption of innocence and other relevant considerations.

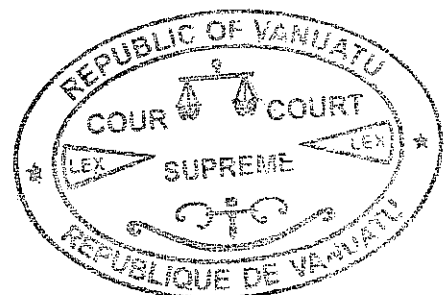
Decision

31. 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. In the present case, the seriousness of the offending is relevant because as already detailed, it involves alleged offending by a Senior Police Officer in relation to 2 subordinate female Police colleagues. If proved, this represents a serious breach of trust and a breach of the trust and confidence that the public are entitled to expect from Police Officers who are charged with upholding the law.
 - 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. There is a real risk of interference with witnesses, and evidence 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.
 - d. Because of the power dynamic, both complainants are vulnerable. Mr Frank is a Senior Police Officer and at the relevant times was their supervisor. Both complainants are fearful. One of the complainant's is concerned that Mr Frank has colleagues and friends within the VPF who may be upset and angry with her. There is no realistic way of preventing contact by Mr Frank with the complainants if he was minded to make contact with them. The complainants' allegations, while untested, would suggest that Mr Frank has little regard for them and is prepared to use his position to sexually abuse subordinate colleagues.



- e. I assess that there is a risk of offending if bail is granted. It arises from the fact that there are 2 separate alleged incidents involving different female Police Officers 4 years apart.
- f. There is nothing to suggest that Mr Frank is a flight risk.
- g. As noted above, where s 60(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. The threats made against Mr Frank are a good reason. Any such threats are to be condemned. However, there is nothing to suggest that Mr Frank's safety is currently at risk. I agree with Ms Tasso that any risks to Mr Frank are appropriately handled by the Correctional Facility who have separated Mr Frank and Mr Songi Michel. While Mr Frank's partner undoubtedly would wish for his support, there is no evidence before the Court as to his partner's current circumstances and how he would propose to offer her support. His bail proposal does not involve his partner. Rather, he proposes to live with his sister in North Efate.
- h. I am not able to assess the strength of the prosecution case, due to the limited information before the Court. Currently, there are untested allegations- but they are not "assumptions" as described by Mr Tevi. It is though curious that two subordinate female Police Officers have made allegations of a sexual nature against Mr Frank.

32. Can bail conditions mitigate the identified risks to an acceptable level so that bail can be granted? The primary risk is of interference with the complainants and evidence. There is also a risk of offending on bail as discussed above.
33. Bail conditions will not meet these risks. Mr Frank will be well aware of how serious his situation is, which might incentivise him to interfere with witnesses or evidence. This is particularly as the alleged offending involves Mr Frank taking advantage of subordinate female Police Officers. That would indicate, if proved, that conditions of bail, will do little if anything, to change Mr Frank's attitude. Both complainants are vulnerable because of the power dynamic, that they have spoken up against a more senior colleague and they are fearful.
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. But 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. There is a credible risk of interference with the complainants and the evidence.



35. I do not consider that there is any special or good reason for bail to be granted, given s60(1) and (3). There is no information to indicate that Mr Frank's safety is currently at risk or that the Correctional Facility cannot appropriately address any safety issues. Indeed, they took steps to separate Mr Frank and his cell mate. I have sympathy for Mr Frank's partner as she has a very young baby to care for, but there is no concrete information before the Court to be able to properly assess this matter. The Prosecutor emphasizes the seriousness of the alleged offending, which is a relevant factor as explained above. 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.

36. Bail is therefore declined.

**DATED at Port Vila this 25th day of July 2024
BY THE COURT**

Mackenzie
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Justice M A MacKenzie

