

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

Criminal  
Criminal Case No. 24/3451

**BETWEEN: ANTHONY SHEM MANUAKE**  
Applicant

**AND: PUBLIC PROSECUTOR**  
Respondent

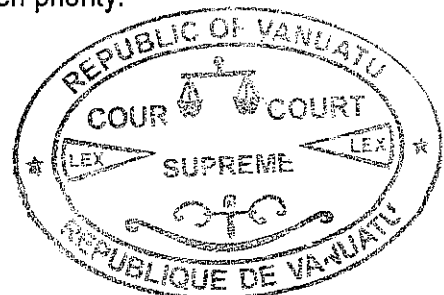
*Date of Hearing: 10 December 2024*  
*Date of Decision: 11 December 2024*  
*Before: Justice M A MacKenzie*  
*Counsel: Mrs P Malites for the Applicant*  
*Mrs B Tamau for the Respondent*

---

### DECISION AS TO BAIL

---

1. Mr Manuake makes an urgent application for bail. He is currently remanded in custody. There are 14 charges detailed in an Information filed on 15 November 2024. The offending (admitted and alleged) spans a time period between 28 July 2023 and 2 September 2024.
2. On 19 November 2024, Mr Manuake entered pleas as follows:
  - a. He pleaded guilty to the following 4 charges – domestic violence (charge 1), intentional assault causing permanent injury (charge 3), escaping lawful custody (charge 7) and intentional assault (charge 14).
  - b. He pleaded not guilty to the following 10 charges- domestic violence (charges 2 and 4), sexual intercourse without consent (charges 5,8,9 and 10), act of indecency without consent (charges 6,11 and 12), threat to kill (charge 13)
3. On 11 December 2024, a trial date will be set. It will be given priority.



## **Result**

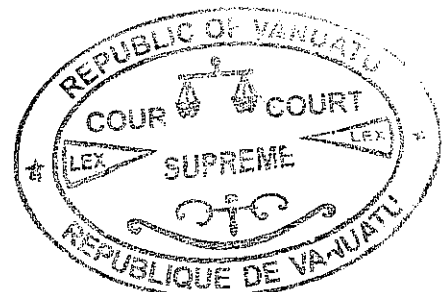
4. After hearing oral submissions from counsel, I declined to grant Mr Manuake bail. I said I would give written reasons. These are my reasons.

## **The admitted and alleged offending**

5. Mr Manuake is aged 19 years. Apart from the escaping custody charge, all the charges relate to two female complainants. One of the complainants was Mr Manuake's partner, and the other a potential partner.
6. In relation to his former partner, Mr Manuake accepts that he was physically violent to her on 3 separate occasions. In July 2023, he assaulted her in public by punching and kicking her to her body. On 19 November 2023, there was an alleged incident where he raised an earlier complaint to police with his partner. This allegedly led to an incident where Mr Manuake knocked his partner unconscious and pulled out one of her teeth. Mr Manuake pleaded guilty to the teeth pulling part of the assault. The third incident of admitted violence took place on 2 September 2024. On that occasion Mr Manuake punched his partner in the face.
7. Mr Manuake also pleaded guilty to escaping custody. On 28 December 2023, he was arrested by police and kept at the police station for a caution interview. Mr Manuake, whilst handcuffed, escaped from police. Under caution, Mr Manuake said he escaped because he did not want to be sent back into the Correctional Centre.
8. Mr Manuake has pleaded not guilty to a raft of other charges, including physical violence and alleged rape offending. On 22 November 2023, there was an incident where Mr Manuake is alleged to have seriously assaulted his partner to the point she lost consciousness, detained her and sexually assaulted her by penetrating her vagina with a small knife, all while taking a video of her vagina. He is alleged to have threatened to post the clip on facebook if she told anyone.
9. The final incident on 2 September 2024 involved Mr Manuake allegedly detaining and raping his partner and another female, as well as compelling them to perform various indecent acts. It is alleged that he made threats to his (now) former partner to make sure she met up with him. It is not in dispute that there was sexual intercourse at that time. Rather, Mr Manuake said under caution that it was consensual.

## **Relevant statutory provision and applicable legal principles**

10. 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 carry a penalty of life imprisonment, s 60 (1) and (3) apply. Section 60 (3) is an exception to s 60 (1) but gives no guidance as to the applicable principles.



11. 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
12. 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):

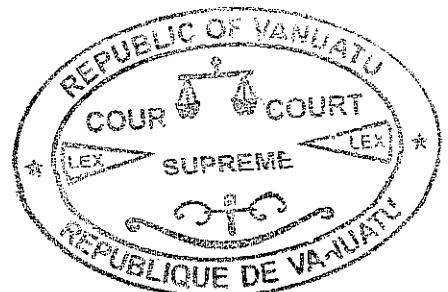
*“When an application is made under Section 60 of the Criminal Procedure Code for someone who has been charged with an offence carrying a maximum term of life imprisonment, it is in my view essential that the applicant comes with good evidence to persuade the Court that his situation is special or such 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.”*

13. 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.
14. 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**

#### **The applicant’s position**

15. Mr Manuake is aged 19 years and has been remanded in custody since September 2024. The high notes of the bail application are threefold:



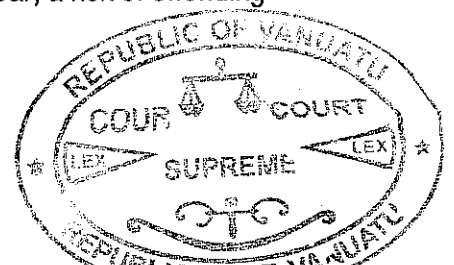
- a. Mr Manuake's age, and undesirability of relatively young people being remanded in custody. Ms Malites submits that the time in custody has had a salutary effect on Mr Manuake.
  - b. The presumption of innocence.
  - c. That stringent conditions could be imposed to manage the risks of bail, such as confining him to home.
16. Mr Manuake proposes a family friend, Ann Marie Tsiabon, as a surety. She and her husband are ministers at a Pentecostal Church located at Beverley Hills area. She has assisted other detainees to turn things around.

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

17. The prosecutor strongly opposed bail. She submits that there is a risk of Mr Manuake filing to appear as he is incapable of respecting authority, as he escaped from custody, so there cannot be confidence that he will abide by bail conditions. Further, it is submitted that there is a high risk of offending on bail, given the duration of the alleged offending which spans a time period of July 2023- September 2024. The prosecutor did not consider there was any risk of interference with witnesses but accepted the Court's view that there is likely a risk of indirect contact.
18. Finally, the prosecutor submits that the evidence is overwhelming, and as such there is a high likelihood of a prison sentence.

### **Factors relevant to the assessing Bail**

19. 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
20. The key factors relating to bail are whether there is a risk of failing to appear, of offending and interference with witnesses. In the present case, all three of these risk factors are engaged. There is a risk of Mr Manuake failing to appear, a risk of offending

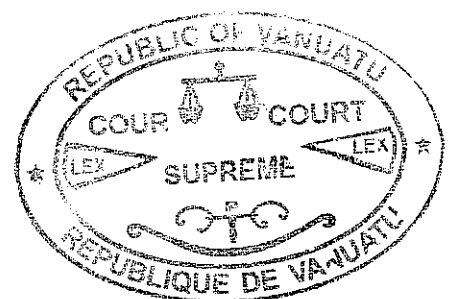


if bail is granted and a risk of interference. Other relevant factors include the seriousness of the alleged offences, the presumption of innocence, the nature and quality of the evidence, the stage of the investigation and Mr Frank's personal circumstances. This is a non-exhaustive list of factors.

21. 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 a tension between the presumption of innocence and other relevant considerations.

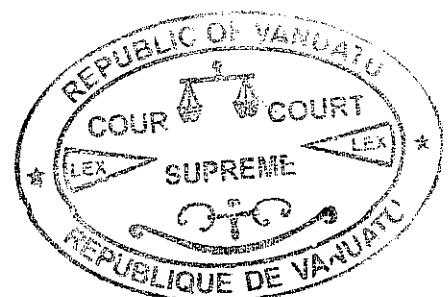
### Decision

22. 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 both admitted and serious alleged offending spanning more than a year, and involving two complainants. The alleged sexual offending is degrading and indicates controlling behaviour.
  - 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. Mr Manuake has pleaded guilty to 4 charges, so that presumption of innocence does not apply to those charges. The focus shifts to likely sentencing outcome. There are some concerning features of that offending which would indicate that a term of imprisonment without suspension may well be warranted.
  - d. I assess that Mr Manuake is a significant flight risk. First, he has pleaded guilty to a charge of escaping custody. Second, he said under caution that he did so because he did not want to go back to the Correctional Centre. Third, these are very serious allegations, which may incentivise Mr Manuake not to attend Court.
  - e. There is a high risk of offending if bail is granted, even with stringent bail conditions as Ms Malites proposes. That is because the admitted and alleged offending took place on various occasions over approximately 14 months. It is not one-off offending, and involves alleged physical and sexual abuse of two young females. Further, there are aspects, if proved, which indicate that Mr Manuake lacks any sort of respect for females and will do what he can to ensure that the complainants



do not give evidence. The back drop to some of the alleged offending is Mr Manuake's concern about police complaints.

- f. 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* [2016] VUSC 210 and *Public Prosecutor v William* [2019] VUSC 10.
  - g. While there is nothing to suggest that Mr Manuake has contacted either complainant by phone during the period of time he has been in custody, there will likely be less oversight and control if he is not in custody. He could easily contact the complainants if he was minded to do so. And a condition that he not to use a phone or social media is unworkable, as it cannot realistically be monitored.
  - h. 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. Ms Malites relies significantly on the presumption of innocence, and that Mr Manuake is 19 years and had a difficulty upbringing. I accept that he is relatively young, and that the most serious allegations are as yet untested. But if convicted, there is no realistic prospect of a suspended term of imprisonment having regard to the Court of Appeal's reaffirmed approach to young offenders in the context of serious sexual offending: *Tulili v Public Prosecutor* [2024] VUCA 54.
  - i. I am not able to assess the strength of the prosecution case, but I intend to allocate a trial as soon as possible given the nature of the alleged offending.
23. Can bail conditions mitigate the identified risks to an acceptable level so that bail can be granted? I consider that all three of the primary risks are engaged here - there is a risk of flight, of offending and interference with the complainants.
24. Bail conditions will not meet these risks. There is no issue with the bail proposal as such, but the Court lacks confidence that bail with conditions will mitigate the identified risks to an acceptable level so that bail can be granted. The fact that Mr Manuake escaped custody does not instil confidence that he is willing or able to comply with bail, and that is relevant because I assess the risk of offending to be high for the reasons discussed. Further, given Mr Manuake's apparent concerns about a police complaint, there is a high risk of interference with the complainants.
25. 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.



26. I do not consider that there is any special or good reason for bail to be granted, given s60(1) and (3), even though Mr Manuake is relatively young. 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. If the charges are proved, a lengthy sentence of imprisonment is inevitable.
27. Bail is therefore declined.

**DATED at Port Vila this 11th day of December 2024  
BY THE COURT**

.....  
Justice M A MacKenzie

