

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

**Criminal**  
**Case No. 24/3258 SC/CRML**

**BETWEEN: SIMEON SEULE**  
Applicant

**AND: PUBLIC PROSECUTOR**  
Respondent

Date of Hearing: 8 September 2025  
Before: Justice M A MacKenzie  
Counsel: Mr L Young for the Public Prosecutor  
Mr W Daniel for the Defendant

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**DECISION AS TO BAIL AND/OR SUSPENSION OF SENTENCE PENDING APPEAL**

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**Introduction**

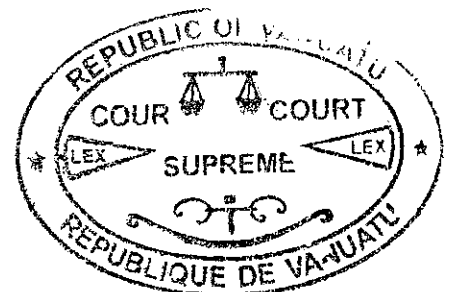
1. Mr Simeon Seule seeks bail pending appeal, or that the sentence be suspended or stayed. On 8 September 2025, Mr Seule filed an amended notice of appeal. He appeals against both conviction and sentence.<sup>1</sup> The appeal is to be heard in the November 2025 Court of Appeal session.
2. Mr Seule was sentenced to 2 ½ years imprisonment on 27 August 2025. The sentence did not commence immediately. It is to commence at 9am 10 September 2025. That is because s50 of the Penal Code [CAP 135] applies. Mr Seule has not elected to start his sentence earlier. Therefore, he is not in custody.

**The Law**

3. There is a discretion to grant bail pending appeal. Section 209 of the Criminal Procedure Code [CAP136] ("CPC") says:

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<sup>1</sup> I have not seen either the original notice of appeal or the amended notice of appeal



## **RELEASE FROM CUSTODY OR SUSPENSION OF SENTENCE PENDING APPEAL**

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.

(2) An application for release from custody on bail under this section may be heard in chambers. In the Supreme Court such application shall be by motion served on the Public Prosecutor. In the Magistrates' Court such application may be made without formal process to any magistrate.

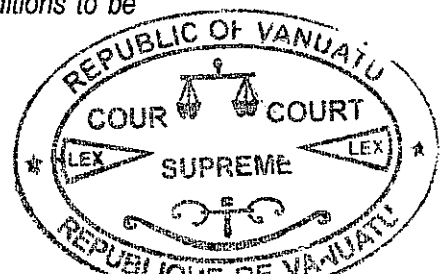
(3) If the appeal is ultimately dismissed and the original sentence confirmed or some other sentence of imprisonment substituted therefor, the time during which the appellant has been released from custody on bail or during which the sentence has been suspended shall be excluded in computing the term of imprisonment to which he is finally sentenced."

4. Section 209 gives no guidance as to how the discretion to grant bail pending sentence or to suspend a sentence should be exercised. While the heading to s 209 refers to suspension of sentence pending appeal, the focus of s 209 is on bail pending appeal. The approach to bail pending appeal is set out in *Public Prosecutor v Giltrap* [2019] VUSC 128. In *Giltrap*, the Honourable Chief Justice discussed the presumption of innocence and the factors to be considered when an application for bail pending appeal is made (at paragraphs 8 - 11):

8. However that power is discretionary as it can be shown by subsection (1) of section 209 which uses the word "**may**". It has to be exercised judicially.

9. From the outset, it is important to point out that the principles to be considered in an application for bail after the conviction cannot be treated as the same as those in an application for bail before conviction. The presumption of innocence which is a guiding legal principle in criminal cases no longer exists after a person has been found guilty by a competent court. By the same note, the right of appeal does not revive that pre-conviction presumption of innocence. It will therefore be a case of exceptional circumstances which will justify the Court in granting bail to a person who has been found guilty and convicted.

10. It is my considered view that in this jurisdiction an application must show that there are matters which constitute exceptional circumstances before bail is allowed pending appeal. It must be pointed out that the conditions to be considered must be based on the inveterate practice of appellate courts in bail applications pending appeals. In such cases, the conditions to be satisfied before bail can be granted pending appeal are that:



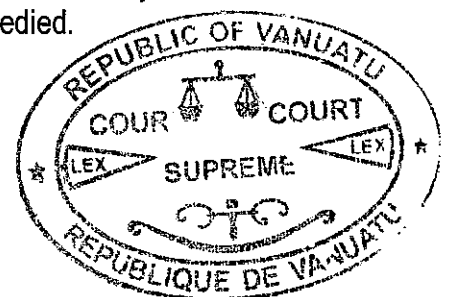
- (a) *There is possibility that a sentence of imprisonment be set aside entirely; or*
- (b) *The sentence is likely to be served completely before the appeal is heard; or*
- (c) *There are exceptional reasons. These last criteria of exceptional reasons or exceptional circumstances must be those of the case and not the applicant/detainee.*

11. I consider that the above conditions are a refinement of those set out in the case of **Public Prosecutor v Walker [2007] VUSC 73**.

- 5. In *Li Jianjun - Bail Judgment [2022] VUCA 20*, the Court of Appeal referred to *Giltrap*, noting that the Court set out several relevant considerations. The Court of Appeal took no issue with the factors or approach set out in *Giltrap*.

### **The Application**

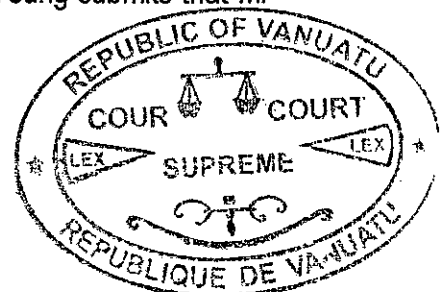
- 6. In the application, Mr Seule seeks either that the sentence be suspended or that Mr Seule be released on bail pending the appeal.
- 7. The application is made on the basis that Mr Seule's circumstances are exceptional in their totality. The exceptional circumstances are:
  - a. That there is a statutory breach of s 50 of the Penal Code [CAP 135], which in accordance with *Li Jianjun*, is an exceptional circumstance in itself. This contention was modified during oral submissions, after I asked Mr Daniel how *Li Jianjun* was applicable to Mr Seule's position. Mr Daniel contended that Mr Seule's former counsel Mr Morrison did not explain to Mr Seule that he had a right to apply for bail pending appeal. I will explain why the s 50 issue raised in *Li Jianjun* does not apply to Mr Seule shortly.
  - b. That Mr Seule has exercised his right to appeal and therefore to incarcerate him would be to punish him before his appeal is heard, subverting the presumption of innocence that underpins the appeal process.
  - c. That Mr Seule has been on bail since 9 August 2024, and has scrupulously complied with all conditions without a single breach.
  - d. That the prospects of the appeal succeeding are strong, and therefore any time served will constitute an irrevocable injustice that cannot be remedied.



- e. That there are personal circumstances which support bail pending appeal. Mr Seule has a very sick child, who is dependent on him. Mr Seule himself has health issues as detailed in the up-to-date medical information annexed to Mr Seule's sworn statement filed in support of the application. He has uncontrolled Type 2 diabetes and hypertension. Further, Mr Seule is the current Member of Parliament for Epi and seeks to continue to perform his duties and responsibilities to his electorate pending determination of the appeal.

### The Response of the Prosecutor

8. Mr Young opposes bail pending appeal, or suspension of the sentence. Mr Young made oral submissions because the written application and supporting sworn statement were only filed at 2pm Monday 8 September 2025. Unusually, I allocated a tentative listing to hear an application for bail pending appeal, without an application having been filed. That is because Mr Blake requested that a tentative listing be given to hear an application for bail pending appeal. Given that time was of the essence, I acceded to the request.
9. Mr Young made the following submissions:
  - a. Section 209(1) is a discretionary power to either grant or refuse bail pending appeal.
  - b. *Li JianJun* is not relevant and is distinguishable, because in that case no regard was had to s 50 of the Penal Code. However, s 50 did apply to Mr Seule who was given the 14 day grace period, which did not happen in *Li JianJun*.
  - c. That none of the *Giltrap* factors are engaged in Mr Seule's case:
    - (i) Mr Young contended that it is unlikely that the sentence of imprisonment would be set aside entirely. He submitted that it is unlikely that either the conviction or sentence will be overturned, given the detailed assessment of the evidence which led to the conviction and that the sentence imposed was within range.
    - (ii) The sentence is unlikely to be served in full before the appeal is heard, as the sentence imposed was 2 ½ years imprisonment.
    - (iii) Exceptional circumstances must be that of the case and not the applicant. Mr Young accepted Mr Seule had personal issues but contended, with reference to *Giltrap*, that they are not relevant. Mr Young submits that Mr Seule's health needs can be met if he is in custody.



- d. Upon conviction, the presumption of innocence no longer exists.

## Discussion

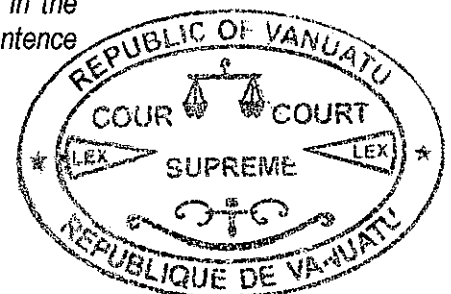
10. Mr Seule has an absolute right to appeal against conviction and sentence. As I have said, the appeal will be heard in the November 2025 Court of Appeal session, so will be able to be heard in a timely manner.
11. Mr Seule has not started serving his sentence as he has not surrendered himself to Correctional Services as he could have done. Therefore, he is not in custody, and ineligible for bail, unless the Court makes an order suspending the sentence in conjunction with a grant of bail. That is because s 209(1) provides for a person to be "released from custody" on bail subject to conditions. For Mr Seule to be granted bail pending appeal then, the Court would need to suspend or stay the sentence. Interestingly, s 209 does not really address suspension of sentence pending appeal. Mr Daniel did not address either in the application or submissions, the basis for suspension of the sentence, distinct from the grounds advanced to grant bail pending appeal. As I understand it, the basis for suspension of the sentence is the same as for bail pending appeal.
12. Mr Daniel's submission that to enforce the sentence before the appeal is heard will subvert the presumption of innocence that underpins the appeal process, is not correct. As the Honourable Chief Justice said in *Giltrap*, the principles to be considered in an application for bail after conviction cannot be treated the same as those in an application for bail before conviction. In *Giltrap*, the Court said:

*"...The presumption of innocence which is a guiding legal principle in criminal cases no longer exists after a person has been found guilty by a competent court. By the same note, the right of appeal does not revive that pre-conviction presumption of innocence. It will therefore be a case of exceptional circumstances which will justify the Court in granting bail to a person who has been found guilty and convicted."*

13. As per *Giltrap*, Mr Seule is required to show exceptional circumstances before bail pending appeal is granted. In *Li Jianjun*, the Court of Appeal considered that there were exceptional circumstances because the sentencing Judge imposed an immediate sentence of imprisonment without regard to s 50 of the Penal Code, which provides:

### 50. Commencement of Sentence

*If the offender has not 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.*

14. Section 50 applied to Mr Seule. In sentencing Mr Seule, I said:

*End sentence*

*48. You are sentenced to 2 years 6 months imprisonment.*

*49. I cannot impose an immediate term of imprisonment. That is because s 50 of the Penal Code applies, as you have not been remanded in custody at all.<sup>2</sup> You are to present yourself to the Department of Corrections at 9am 10 September 2025 to begin the sentence, unless you elect to begin the sentence earlier. The Director of Corrections is to confirm to the Court that you have presented yourself to Corrections to start serving the sentence.*

*50. You have 14 days to appeal.*

15. Mr Seule was not sentenced to an immediate term of imprisonment. As was required by s 50, he did not need to begin serving his sentence until the 14 day appeal period expired, unless he earlier elected to begin serving his sentence. He was afforded the rights given in s 50. Therefore, in Mr Seule's case, s 50 of the Penal Code is not an exceptional circumstance. There was no breach of the statutory right, as initially contended in the bail application. And whether or not Mr Morrison advised Mr Seule that he could make an application for bail pending appeal is of no moment, because he has made an application for bail pending appeal.

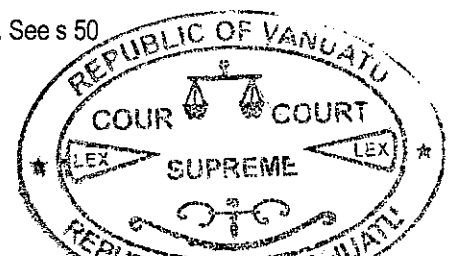
16. I now turn to consider the *Giltrap* factors.

17. *The possibility that the sentence of imprisonment will be set aside entirely* – I accept that if the conviction appeal is successful, then the sentence will be set aside. It is difficult to assess the merits of the conviction appeal. Counsel have divergent views about that. Perhaps more importantly, in *Li Jianjun*, which Mr Daniel relied on, the Court of Appeal said:

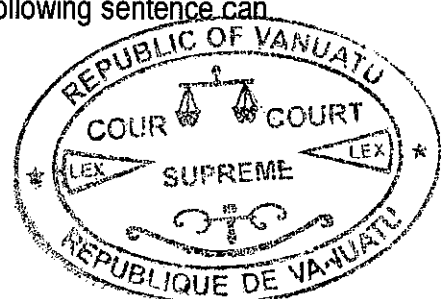
*"...there remains the possibility that the whole sentence may be set aside if the appeal against conviction is successful (point A). That, however, does not amount to exceptional circumstances as any appeal against conviction promises that hope."*

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<sup>2</sup> Also, no warrant of arrest or remand was issued against Mr Seule at the time of conviction. See s 50



18. *Li Jianjun*, as Mr Daniel submitted, is binding. Therefore, the possibility the sentence may be set aside does not amount to exceptional circumstances.
19. *The sentence is likely to be served completely before the appeal is heard*- the sentence imposed was 2 ½ years imprisonment without suspension. The appeal is to be heard in November 2025, so there is no prospect that the sentence will be completely served before the appeal is heard.
20. *There are exceptional reasons* - As was held in *Giltrap*, the exceptional reasons or circumstances must be those of the case, and not the applicant. I do not regard good compliance with bail to be an exceptional circumstance. While the Court of Appeal in *Li Jianjun* commented on the applicant's good compliance with bail, the Court made no finding that bail compliance amounted to an exceptional circumstance. Rather, it was a factor taken into account in assessing Mr Jianjun's suitability for bail once the Court had determined there was an exceptional circumstance. Likewise, if I was satisfied that exceptional circumstances were made out here, then I accept Mr Seule is suitable for bail given his good compliance with bail.
21. I accept that Mr Seule has a child with a health issue. I acknowledge that the health issue is important for Mr Seule's child. His son was diagnosed with osteomyelitis on 1 October 2023. Late presentation resulted in an infection which spread. Mr Seule's son was reviewed on 1 September 2025, and can walk without aid but with a limp due to the right lower limb shortening. This has resulted extensive destruction of the hip socket. The medical report does not say how this impacts on the child's quality of life or how this is to be treated. It appears to have impacted on his attendance at school given the letter from the school annexed to Mr Seule's sworn statement.
22. For the purposes of this application, there is updated medical information about Mr Seule's health. As noted, Mr Seule has hypertension and uncontrolled Type 2 diabetes. Mr Seule was diagnosed with Type 2 diabetes in 2016. There is a recommendation that Mr Seule is followed up once a week and the dosage of a particular medication increased until his fasting blood sugar is lowered to less than 7. An obvious point is that there is no suggestion that these health conditions stand in the way of Mr Seule continuing in his role as Member of Parliament for Epi, which is a plank of his application for bail or suspension of sentence. Due to the short notice, Mr Young was unable to file a sworn statement from Corrections but advised he had spoken to Corrections and detainees are able to attend hospital for appointments and treatment. In my view, that is a fundamental human right.
23. One final matter is that Mr Seule wishes to continue to serve the people of Epi as a Member of Parliament. He put information before the Court from the Speaker of Parliament that it is possible for the period in which Mr Seule can retain his seat under the Members of Parliament (Vacation of Seats) Act [CAP 174] following sentence can be extended.



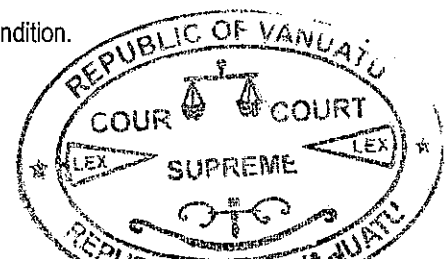
24. I do not consider that any of these factors amount to exceptional circumstances relating to the case. They are personal factors relating to Mr Seule and not the case. According to *Giltrap*, the exceptional reasons or circumstances must be those of the case, and not related to Mr Seule himself. In *Giltrap*, business, family and health reasons were advanced as exceptional circumstances. However, the Court said these were not exceptional reasons or circumstances of the case to justify release on bail pending appeal.<sup>3</sup> There is nothing before the Court which demonstrates there are exceptional circumstances relating to the case, as there was in *Li Jianjun*. If personal factors could be taken into account, I do not think they reach the exceptional threshold for the reasons given, even though I have sympathy for the health issues faced by both Mr Seule's child and Mr Seule.
25. Accordingly, there is no basis to grant bail pending appeal. The only factor engaged is the possibility the sentence will be set aside if the conviction appeal succeeds. But the Court of Appeal has said that does not amount to an exceptional circumstance. That links back to the Honourable Chief Justice's observations in *Giltrap* that the right of appeal does not revive the pre-conviction presumption of innocence. There are no exceptional circumstances relating to the case that the Court has been made aware of.
26. These reasons are equally applicable to the application for a stay or suspension of the sentence pending appeal. Such an order would be necessary in this case as Mr Seule is not yet in custody. The grounds advanced appear to be the same as for bail pending appeal. I note that s 209 gives no guidance as to when a sentence should be suspended. Usually, an applicant is to satisfy the Court that the interests of justice require the sentence to be stayed or suspended. If there were exceptional circumstances to grant bail pending appeal, then it is axiomatic that the sentence should be stayed. But there are no exceptional circumstances, and therefore, no proper foundation at this point to stay or suspend the sentence. And no grounds as to stay or suspension of the sentence were advanced separate to the grounds put forward in the application for bail pending appeal. Further, Mr Daniel did not address the Court as to any authorities or the criteria to be applied in determining whether or not to stay or suspend a sentence pending appeal.
27. It is open to Mr Seule to bring a fresh application to stay or suspend the sentence if there is a proper basis to do so.

## Result

28. The application for bail pending appeal and to stay or suspend the sentence is declined and dismissed.

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<sup>3</sup> There was a lack of medical information put forward in *Giltrap* about Mr Giltrap's medical condition.





29. Mr Seule is to present himself to **Correctional Services at 9 am 10 September 2025** to begin serving his sentence.

**DATED at Port Vila this 9th day of September 2025**  
**BY THE COURT**

*maue*  
.....  
Justice M A MacKenzie

