

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

Criminal
Case No. 25/1302 SC/CRML

BETWEEN: OKIS NALAWAS
Applicant

AND: PUBLIC PROSECUTOR
Respondent

Date of Bail Hearing: 7 November 2025
Before: Justice M A MacKenzie
Counsel: Mr H Rantes for the Applicant
Ms S Langon for the Respondent

DECISION AS TO BAIL

Introduction

1. Mr Nalawas makes an application for bail. He faces a charge of sexual intercourse without consent contrary to ss 90(a) and 91 of the Penal Code [CAP 135].
2. Mr Nalawas has entered a plea of not guilty to the charge. Subject to a priority ranking of trials, the case will be heard during the Tanna Court tour, commencing on 17 November 2025.

Result

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

The alleged offending

4. The alleged offending occurred at Imaru village, Tanna. In October 2020, the complainant was returning to her village. She saw Mr Nalawas standing on the road. He followed her, is alleged to have grabbed her while holding a knife and pulled her into



some bushes. The complainant alleges he removed her clothes and had sexual intercourse with her.

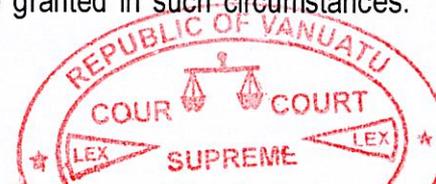
5. The complainant made a complaint to police. Mr Nalawas was interviewed by police on 26 October 2020 and elected to remain silent.

Relevant statutory provision and applicable legal principles

6. Bail is to be considered under s 60 of the Criminal Procedure Code [Cap 136] ("CPC"). In this case, because the charge of sexual intercourse without consent carries a penalty of life imprisonment, ss 60 (1) and (3) apply. Section 60 (3) is an exception to s 60 (1) but gives no guidance as to the applicable principles.
7. Section 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.
8. 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."

9. 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.
10. 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.

11. 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

12. The primary factors relating to bail are the risks of:

- i. failing to appear.
- ii. interference with witnesses or evidence.¹
- iii. offending if bail is granted.

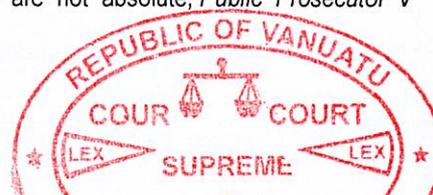
13. Other relevant factors include:

- i. the seriousness of the alleged offences.²
- ii. the presumption of innocence. The presumption of innocence is a right enshrined by Article 5 of the Constitution.³
- iii. the nature and quality of the evidence,
- iv. the stage of the investigation and
- v. The defendant's personal circumstances.

¹ 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.

² 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.

³ 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.



14. It should be noted that these factors are non-exhaustive. An assessment as to whether bail should be granted in an individual case will always be fact specific.
15. 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 will always be a tension between the presumption of innocence and other relevant considerations.

Discussion

16. The starting point is that Mr Nalawas is ineligible for bail because s 60 of the CPC applies. Therefore, he needs to demonstrate good or special reasons for bail to be granted as he faces a charge of rape. However, Mr Nalawas does not advance any such good or special reason. The basis for the application is that Mr Nalawas needs to be released on bail to provide for his family. He is married and has two young children. Further, he assists his parents to pay school fees for his three younger siblings. I do not consider the need to support his family, and in particular to pay school fees for his siblings, amounts to a special or good reason.
17. Mr Malcolm proposes to live in Tanna with his father. Mr Rantes submits that strict bail conditions will mitigate any of the key risks. Mr Nalawas believes the complainant is currently living in Port Vila, so there is no possibility of interference with the complainant. And that if granted bail, strict bail conditions can mitigate risk of interference to an acceptable level. Ms Langon has information from the complainant's family that she is in fact living in Tanna. The complainant's exact location is unknown, and her family are now avoiding calls. So, there is conflicting information as to where the complainant is at present.
18. The prosecutor submits that no good or special reason for bail has been put forward by Mr Nalawas, and therefore bail should not be granted.
19. I accept that the seriousness of the offending alone does not displace the presumption of innocence.⁴ Mr Nalawas is entitled to the presumption of innocence, a fundamental right enshrined in Article 5 of the Constitution. However, as was said in *Public Prosecutor v William* [2019] VUSC 10, in the context of bail, it is not an absolute right. This is a serious alleged rape. It has concerning features. Mr Nalawas is alleged to have been in possession of a knife when he grabbed the complainant, took her into the bushes and raped her in a public place. At the least, it is brazen, if proved.
20. In this case, I consider that two of the primary risks are engaged. There is a risk that Mr Nalawas will offend on bail and will contact the complainant. This is a concerning allegation. The risk of offending on bail arises from the nature of the alleged offending, that it occurred in public, and its seeming random nature. There is a risk to any young

⁴ See *Public Prosecutor v Jeajea* [2016] VUSC 159.



female in the area. I cannot conceive of any bail condition that could mitigate the risk of another similar alleged incident.

21. While I accept the risk of interference may be mitigated to an extent by geographical distance, if the complainant is in Port Vila, but that ignores the reality of modern communications. Mr Nalawas could easily locate the complainant on social media and start communicating with her. Again, that risk is difficult, if not impossible to manage or mitigate by bail conditions. The uncertainty about the complainant's whereabouts does not help Mr Nalawas's case for bail. I asked Mr Rantes about the source of his submission that the complainant is in Port Vila. That information was relayed to him by Mr Nalawas and family. That suggests an interest on the part of Mr Nalawas and his family as to the complainant's whereabouts.
22. There are two other inter-related issues relevant to a risk of interference. Ms Langon advised me that the complainant was approached by Mr Nalawas' family in late 2020 about a custom reconciliation. Shortly thereafter, the complainant made a second statement retracting her initial police report. The tentative trial date is close, so if the complainant is in Tanna, I infer it would be easy for Mr Nalawas or his family to locate the complainant and speak to her as their respective families are from Central Tanna. Notably, their villages are half an hour's walk apart. The stakes are higher now than they were in 2020. I assess that there is a credible risk of interference, which cannot be met by bail conditions.
23. This is serious alleged offending. When considering bail, the Court should always identify bail risks but then consider whether they can be mitigated to an acceptable level so that bail can be granted. As discussed, I am not persuaded that the risks I have identified can be adequately mitigated by bail conditions, as proposed.
24. Further, while I acknowledge Mr Nalawas is entitled to the presumption of innocence, s 60 of the CPC applies. It is for Mr Nalawas to establish that there are good or special reasons for bail to be granted. He has not done so, and accordingly, bail is refused.

**DATED at Port Vila this 7th day of November 2025
BY THE COURT**


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Justice M A MacKenzie

