

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

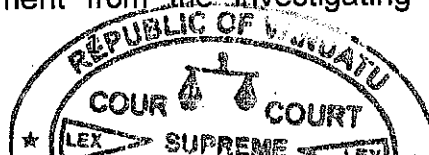
Bail Application Case No. 638 of 2015

**JIMMY REMO  
V.  
PUBLIC PROSECUTOR**

*Mrs. MNF Patterson for the Applicant  
Mr. S. Blessings for the State*

**BAIL RULING**

1. This is the second bail application this court has had to deal with during this circuit. The defendant a serving police detective was charged on 12 November 2015 before the Magistrate's Court with a single offence of Sexual Intercourse Without Consent contrary to Section 91 of the Penal Code.
2. Before the Magistrate's Court on the application of the prosecutor the defendant was remanded in custody. An oral application for bail by the Public Solicitor's Office who represented the defendant in the Magistrate's Court was not entertained, instead, counsel was advised to file a formal application in this Court. On 13 November 2015 an application was filed in this Court with a supporting sworn statement from Steven Nalau, a police officer and relative of the defendant who is willing to act as supervisor of the defendant should he be released on bail.
3. The preliminary inquiry I am informed has been fixed for 10 December 2015. As such this court, does not have before it the depositions in the case and must rely on counsels to inform it of the nature and strength or weaknesses in the prosecution's evidence and the state of police inquiries.
4. In this latter regard applicant's counsel indicates that the defendant denies the offence and will say that the event never happened at all and was a complete fabrication on the complainant's part. The prosecutor disagrees and says that there is strong circumstantial evidence of the offence having occurred as well as reliable and accurate identification by the complainant that the defendant was her assailant.
5. In the absence of the depositions or any sworn statement in support of the prosecution's opposition such as a signed confession or the complainant's statement or a sworn statement from the investigating police officer, no



accurate assessment can be made as to the strength of the prosecution's case which is a significant factor bearing on the present application.

6. Be that as it may applicant's counsel summarises the grounds for bail as being largely "*family reasons*" in so far as the defendant is the sole bread winner of his family comprised of a "*defacto partner and 4 little children*" who live in rented accommodation at Sarakata Area. The applicant also supports his elder brother's 2 children in Tanna by paying for their school fees. He promises to comply with any bail conditions imposed on him and advances several usual conditions that he agrees to be bound under, including weekly reporting at the police station and residing with Steven Nalau.
7. Counsel also submitted that given his familial responsibilities the defendant is not a flight risk and the defendant needs to be free to tend to their needs as well as instruct his counsel who is based in Port Vila. Although suspended the defendant remains a police officer and intends to vigorously defend the charge against him.
8. Prosecuting counsel opposed the application on the basis that the offence was serious and police enquires were still incomplete. He confirmed that the defendant had been suspended from the police force pending the outcome of the case and counsel made the unusual and novel submission that as the solicitors responsible for filing the defendant's bail application was no longer acting for the defendant, there should be a fresh application filed by the defendant's new counsel. I cannot agree with the submission.
9. The bail application and supporting sworn statement was filed under instructions from the defendant and are court documents that belong to the defendant not his counsel and can only be withdrawn by the defendant. The change of counsel and the consequent withdrawal of their instructions can have no retrospective effect or automatic consequence such as to enable counsel who is removed, unilaterally withdrawing the defendant's existing bail application and supporting sworn statement without specific instructions to that effect from the defendant or the deponent.
10. There is no suggestion that the defendant presents a "*flight-risk*" or that there is a serious danger of witness-tampering or interference if he is released on bail. Prosecution also accepts that the defendant at this stage has a "*presumption of innocence*" in his favour. The presumption is clearly recognised in Article 5(2) of the Constitution.
11. Additionally, Article 5(1) recognises that all persons are entitled to the following fundamental rights and freedoms including:

"(b) Liberty;  
(c) Security of the person; and



(i) freedom of movement".

In similar vein Section 60 of the Criminal Procedure Code ("CPC") recognises the power of this Court to direct the release of any person from custody on bail with or without conditions.

12. In Public Prosecutor v. Pattinson [2014] VUSC 97 this Court had occasion to consider the provisions of Section 60 of Criminal Procedure Code and the Court said:

"20. The Court accepts that it has power to grant the defendant bail under Section 60(3) of the CPC. Whatsoever the power is exercisable notwithstanding that the defendant has been denied bail in the Magistrate's court.

21. Undoubtedly, the grant of bail is an exercise of the Court's discretion and must be done judicially. Although the discretion is unfettered, some assistance can be distilled from other relevant provisions of the CPC.

22. For instance, a person accused of an offence punishable by life imprisonment cannot be bailed by a police officer or by the Magistrate's Court [S. 60(1)]; a primary purpose of bail is to secure the attendance of the defendant before a court [ss. 60(1); 61 and 62(2)]; bail may be granted with or without conditions [ss. 60(1) & (2); 61]; conditions may also be imposed that are "... necessary in the interests of justice or for the prevention of crime" [s. 62(2)];

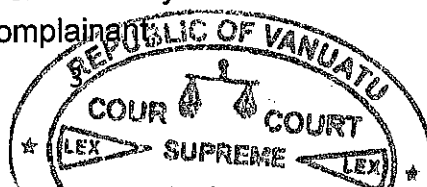
23. Reference may also be made to **Section 80** of the CPC which contains a clear statement as to the "presumption of innocence" in an accused's favour. The section also refers to the "burden of proof" in a criminal trial being on the prosecution and to the required standard of proof being "guilt beyond reasonable doubt".

24. Lastly, **Section 117** of the CPC recognizes the right of an accused person to be defended by an advocate in any proceedings instituted under the CPC. These latter provisions reinforce the fundamental rights and freedoms in Article 5 of the Constitution."

13. In light of the foregoing after careful consideration of the prosecution's opposition I am unpersuaded that the release of the defendant would constitute a hindrance to the public interest in his prosecution or that the defendant will not attend his trial when called upon. I am also mindful that as a police detective there may be a risk to the personal safety and security of the defendant whilst remanded with offenders who he may have investigated during his official duties.

14. Accordingly, the defendant's application for bail is granted and the defendant is ordered to be released from custody forthwith on the following conditions:

- a) The defendant is not to commit any offences while on bail;
- b) Not to approach directly or indirectly or interfere with the prosecution witnesses especially the complainant.



- c) The defendant is to report at the Police Station at Luganville and sign in every Friday during working hours between 7.30 a.m. to 4.30 p.m.;
- d) The defendant is not to leave Santo island;
- e) Must reside with and remain at all times under the supervision of Steven Nalau, a Police Officer at Sarakata Area in Luganville, Santo;
- f) The defendant is to attend the Preliminary Inquiry before the Magistrate's Court on 10 December 2015; and
- g) The defendant is to appear in the Supreme Court on any dates notified by the Court.

DATED at Luganville, Santo, this 4<sup>th</sup> day of December, 2015.

BY THE COURT

  
D. V. FATIAKI  
Judge.

