

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

Criminal
Case No. 20/2740 SC/CRML

BETWEEN: Steven Malites

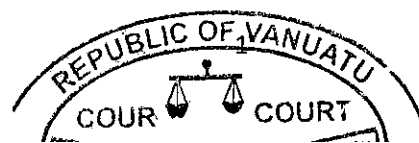
Applicant

AND: Public Prosecutor

Date of Hearing: 9 October 2020
Before: Justice V.M. Trief
In Attendance: Applicant – Mr J. Garae, by video link from Santo Court House
Public Prosecutor – Mr P. Sarai

DECISION AS TO BAIL APPLICATION

1. Mr Malites sought bail. The Sworn statement of Philip Malites was filed in support of the Application. The Prosecution opposed the application.
2. Mr Malites is charged with 2 counts of unlawful sexual intercourse and 1 count of act of indecency with a young person. That young person is now 11; she was 8 at the time of the alleged offending.
3. Mr Malites is committed to trial in the Supreme Court, for the next Court tour to Malekula (CRC 20/2201). That is currently scheduled for February 2021.
4. Mr Sarai submitted that given the seriousness of the offending (the maximum penalty for unlawful sexual intercourse is life imprisonment) and that there was more than one occasion of offending, there are issues of safety for both Mr Malites and the alleged victim if he were to be allowed to return to Wala Island to reside with Mr Philip Malites. Mr Sarai submitted that Mr Malites should remain on Santo and only return to Malekula for the trial.
5. Mr Garae referred to a Solomon Islands case and submitted that there must be a real – not assumed – risk for the Court to refuse bail, and it would be a grave injustice for Mr Malites to remain in custody for a lengthy period and then be found innocent. He submitted that February 2021 was too long to wait until the trial as Mr Malites has been in custody since August 2020. Mr Garae stated that efforts had been made but did not succeed to find family that Mr Malites



could reside with on Santo. In the event bail is refused today, they will renew efforts to find family at Santo then file a new application for bail.

6. The primary considerations for a bail application are whether the defendant will offend whilst on bail, that there be no interference with the Prosecution witnesses and that the defendant will appear when required.
7. The Wala community even though it is spread across Wala Island and Wala 'mainland' is one community. I am concerned that if Mr Malites were allowed to return to Wala Island, his mere presence within the community might negatively impact on the complainant such that her ability and/or willingness to attend trial is affected. This is a concern particularly as she is so young. This might in turn lead to fresh charges of offending.
8. I acknowledge that efforts have been made to find family on Santo that Mr Malites could reside with whilst on bail. Efforts could be made to find a residence for him further afield on Malekula or indeed elsewhere in Vanuatu.
9. Given the prevalence of mobile phones and social media, which young people in particular are very comfortable at using, I am also concerned that the proposed bail conditions do not address communication with witnesses nor Mr Malites' access to electronic devices.
10. In the circumstances, I declined Mr Malites's application for bail.
11. The decline of bail does not preclude a fresh bail application at a later point in time on the basis of a change of circumstances.

**DATED at Port Vila this 9th day of October 2020
BY THE COURT**

V.M. Trief

V.M. Trief
Judge

