

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

Criminal
Case No. 24/3804 SC/RML

BETWEEN: Public Prosecutor

AND: Micah Johna and Hiwa Obed
Defendants

Before: Justice Oliver A. Saksak

Counsel: Mr Christopher Shem for Public Prosecutor
Mr Harrison Rantes for the Defendant

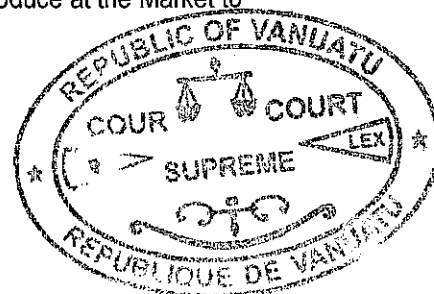
Date of Plea: 4th December 2024

Date of Bail Hearing: 4th December 2024

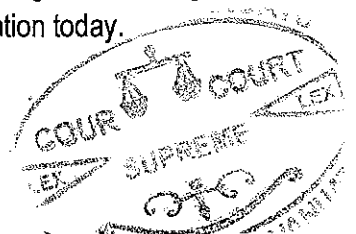
Date of Decision: 4th December 2024

DECISION

1. The two defendants were charged with one count each of sexual intercourse without consent contrary to sections 90 (a) and 91 of the Penal Code. Both entered not guilty pleas through their lawyer.
2. Subsequently I heard Mr Rantes in relation to the defendant's application for bail filed yesterday 3rd December 2024 together with 2 sworn statements in support by Hiwa Obed and Micah Jonah.
3. The defendants were arrested and kept in custody on remand on 13th September 2024. They apply under section 60 of the Criminal Procedure Code Act [Cap 136] and Article 5 of the Constitution. They rely on the evidence by sworn statements of the defendants and on the case authorities of PP v Festa [2003] VUSC 65 and PP v Jeajea [2016] VUSC 159.
4. The grounds for the application for Micah Jonah are that he is a married man with 3 children living on Epi Island whose mother had died, his second wife from Tanna has 2 children, the wife is currently in Port Vila having just given birth to their 3rd child that he is the sole breadwinner for the family as taxi-driver, and that he supports his 3 children attending school on Epi and in Port Vila.
5. As for Obed Hiwa the grounds form his application are that he is a married man with 5 children and that he his only a subsistence farmer who plants and sells garden produce at the Market to support himself and his family.



6. Mr Rantes submits that on those grounds and on the legal basis as supported by case law, bail should be granted with proposed conditions.
7. Mr Shem opposes the application first on the basis of section 60 (1) of the CPC Act which expresses the clear intention of Parliament that for an offence punishable by life imprisonment bail is not available. However subsection (3) provides for a discretion on the Supreme Court to grant bail on conditions.
8. Mr Shem also relied on PP v Jeajea in particular on paragraph 11 where the Judge in that case said that the prosecution bears a heavy onus in opposing bail applications to produce some evidence to influence the Court to use its discretion to grant bail. And Mr Shem submitted that despite the defendants deposing to two separate sworn statements, they still lack an independent surety to provide support, supervision and control over them whilst on bail so they do not breach their bail conditions.
9. Secondly Mr Shem submits that there is evidence in the PI Bundle of Documents before the Court that a reconciliation ceremony has been performed by the 2 defendants to the complainant. And as a result the complainant has made a statement to the Court withdrawing the case. Further the complainant has stated in the Fourth paragraph of her statement dated 23/09/2024 that a bigger reconciliation ceremony will take place when the two defendants are released from custody.
10. I accept Mr Shem's submissions. First, section 60 (1) of the CPC Act is clear. Rape or sexual intercourse without consent carries life imprisonment therefore bail is not automatic. Only the Court alone can decide to grant bail or not to grant bail. There have been cases where lawyers have consented to bail in a consent order and have submitted draft consent orders for endorsement by a Judge. Once lawyers reach that decision, they have taken over the jurisdiction of the Supreme Court under section 60 (3) of the CPC Act and that amounts to abuse of jurisdiction.
11. It is trite law that only the Supreme Court has discretionary power to grant bail where an offence punishable by life imprisonment is committed, but only upon the Prosecution providing some evidence to assist the Court in exercising its discretion in favour of or against the grant of bail.
12. In this case I am satisfied first that there is no surety for bail provided by the applicants. Second, I am satisfied from the statement of the victim that there has been interference and there is a high risk of further interference by the defendants through their relatives to have the complaints withdrawn in order to release them from custody, and to have a bigger reconciliation ceremony.
13. The grounds advanced by the defendants in support of their application are rejected. There are relevant points of consideration by the defendants to bear in mind before acting in the wrong way they did. They cannot be used as grounds to support their bail application today.



14. For those reasons, I decline and dismiss this bail application. The two defendants are to be remanded further in custody until trial to be held in the week commencing on 10th March 2025. A formal notice will be issued by the appropriate Judge.
15. This file is to be returned to the Registry for reallocation to the Judge who will do the March Tour to Tanna in 2025.

DATED at Isangel, Tanna, this 4th day of December 2024

BY THE COURT


Hon. OLIVER A SAKSAK

Judge

