

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

Criminal
Case No. 25/2073 SC/CRML

BETWEEN: JOHN IAPUT
Applicant

AND: PUBLIC PROSECUTOR

Date of Bail Hearing: 13 August 2025
Before: Justice M A MacKenzie
Counsel: Mr E Molbaleh for the Applicant
Mr T Karae (Holding papers for Ms M T Silememea) for the Respondent

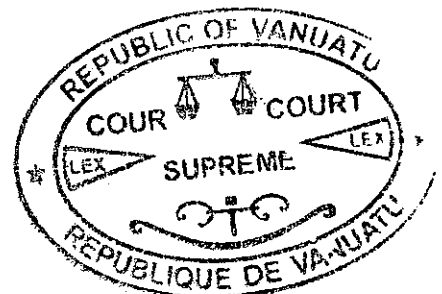
DECISION AS TO BAIL

Introduction

1. Mr Iaput makes an application for bail. He faces 8 charges. They are:
 - 4 charges of sexual intercourse without consent contrary to s 97(1) of the Penal Code [CAP 135].
 - 2 charges of act of indecency contrary to s98 of the Penal Code [CAP 135].
 - 1 charge of domestic violence contrary to ss 4 and 19 of the Family Protection Act.
 - 1 charge of threats to kill.
2. The Preliminary Inquiry has been completed. Mr Iaput has been committed for trial in the Supreme Court and is due to enter a plea to the charges on 2 September 2025.

Result

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



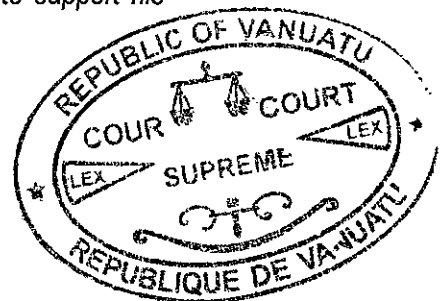
The alleged offending

4. The 21 year old complainant is Mr Iaput's step daughter. The alleged offending started when the complainant was aged 15 years. There is a detailed summary of facts which sets out the alleged offending. By way of summary, it is alleged that Mr Iaput sexually abused the complainant on multiple occasions between 2017 and 2021, and used violence and threats to kill to overcome resistance and to ensure that she did not tell anyone. The alleged sexual offending includes an incident where Mr Iaput touched the complainant's vagina, another incident where he touched her vagina using a cucumber, and multiple incidents of rape. In 2021, Mr Iaput would threaten to kill the complainant while holding a knife so that she would give in to his demands to have sexual intercourse.
5. In 2025, the complainant became aware that Mr Iaput had threatened to stab her mother with a knife because the complainant wanted to travel to Tongariki Island with her partner. The complainant became afraid and so reported Mr Iaput to a family member who is a police officer.

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 charges of sexual intercourse without consent carries a penalty of life imprisonment, s 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) :

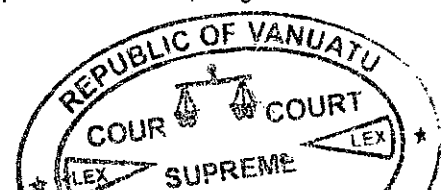
"When an application is made under Section 60 of the Criminal Procedure Code for someone who has been charged with an offence carrying a maximum term of life imprisonment, it is in my view essential that the applicant comes with good evidence to persuade the Court that his situation is special or such 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:
 1. failing to appear.
 2. interference with witnesses or evidence.¹
 3. offending if bail is granted.
13. Other relevant factors include:
 1. the seriousness of the alleged offences.²

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.



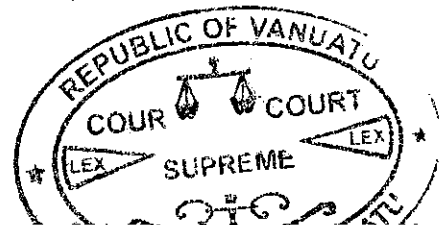
2. the presumption of innocence. The presumption of innocence is a right enshrined by Article 5 of the Constitution.³
 3. the nature and quality of the evidence,
 4. the stage of the investigation and
 5. The defendant's personal circumstances.
14. It should be noted that these factors are non-exhaustive. 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, as rightly contended by the prosecutor, is that Mr Iaput is ineligible for bail because s 60 of the CPC applies. Mr Iaput needs to demonstrate good or special reasons for bail to be granted as he faces charges of rape. However, he does not advance any such good or special reason. Mr Iaput proposes to live with Mr Jimmy, at Etmat, Erakor. The application is advanced on the basis that any bail risks can be mitigated by bail conditions and Mr Iaput's assurances that he will not offend if granted bail, and will not interfere with any of the witnesses. In that regard, Mrs Malites highlights that the complainant is no longer living in Efate but is living on Tongariki Island.
17. The prosecutor filed thorough submissions opposing bail, and submits that bail should not be granted, as all three of the primary risks are engaged. The prosecutor contends that Mr Iaput is a flight risk because he ran away from police, there is a risk of interference with both the complainant and her mother, because of his controlling and threatening behaviour towards them, and a risk of offending as he has allegedly made threats to his partner with a knife, as set out above.
18. I accept that the seriousness of the offending alone does not displace the presumption of innocence.⁴ Mr Malcolm 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 sexually offending. It has very concerning features. Mr Iaput is alleged to have treated the complainant as his sexual plaything over a number of years. He threatened and intimidated her to get his way and to ensure that she stayed silent.

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.

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

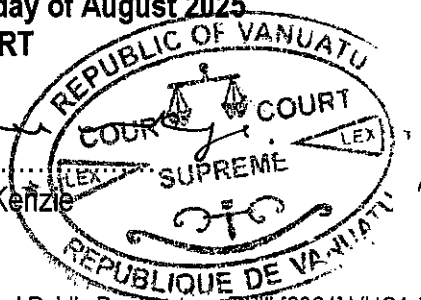


As the prosecutor noted in the written submissions, Mr Iaput made admissions in his caution interview with police that he considers the complainant to be his wife, and that even though she now has a partner and has moved away, he can still intimidate, and threaten her, so she is afraid. Notably, the alleged offending started when the complainant was aged 15 years, and was vulnerable due to her age and the power and control dynamic of the relationship.

19. In this case, I consider that all three of the primary risks are engaged. There is a risk that Mr Iaput will not attend Court, offend on bail and interference with the complainant. As explained at paragraph 18 above, this is alleged sexual offending with serious features. If he either pleads guilty or is found guilty, the sentence will inevitably be a lengthy fulltime custodial sentence.⁵ That may incentivise him not to come to Court. Further, when police advised him of the complaint, Mr Iaput ran away from police. The risk of offending on bail arises from both the callous and repetitive nature of the alleged offending, and the allegation that he threatened his partner with a knife because the complainant wanted to go to Tongariki Island. That demonstrates Mr Iaput's perceived level of control over the complainant. I cannot conceive of any bail condition that could mitigate the risk of offending if bail is granted. Finally, the risk of interference is mitigated by geographical distance with the complainant, but the complainant's mother lives in Teouma, which is not very far away from the proposed bail address. But perhaps more relevantly, I have no confidence that Mr Iaput will stay away from the complainant and will be unable to resist threatening and intimidating her, as he acknowledges that himself in his interview with police. The submission that the complainant is living at a geographical distance also ignores the reality of modern communications, and the dynamic of power, control and alleged intimidation of the complainant. Mr Iaput 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.
20. This is serious alleged offending. The complainant is vulnerable. 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. Mr Iaput's assurances are worthless. His actions speak louder.
21. Further, while I acknowledge Mr Iaput is entitled to the presumption of innocence, s 60 of the CPC applies. It is for Mr Iaput 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 13th day of August 2025
BY THE COURT**

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Justice M A Mackenzie



⁵ With reference to Public Prosecutor v Scott [2002] VUCA 29 and Public Prosecutor v Tuilli [2024] VUCA 54