

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

**Criminal**  
**Case No. 24/2698 SC/CRML**

**BETWEEN: ALBERT DELAY**  
Applicant

**AND: PUBLIC PROSECUTOR**

Date of Bail Hearing: 5 September 2025  
Before: Justice M A MacKenzie  
Counsel: Mr JS Garae for the Applicant  
Ms R Siri for the Respondent

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### **DECISION AS TO BAIL**

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#### **Introduction**

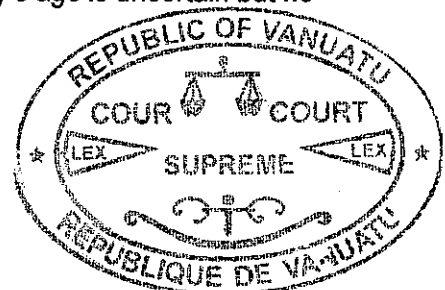
1. Mr Delay makes an application for bail. He faces 3 charges. They are:
  - 1 charge of unlawful sexual intercourse contrary to s 97(1) of the Penal Code [CAP 135].
  - 2 charges of act of indecency with a young person contrary to s 98A of the Penal Code [CAP 135].

#### **Result**

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

#### **The alleged offending**

3. The two complainants are Mr Delay's grandchildren. Mr Delay's age is uncertain but he is likely in his 90's.



4. In March 2024, Mr Delay's two grandchildren were playing outside. They were allegedly called into the house, where Mr Delay forced them to hold his penis while he recorded it on his phone. Both held his penis and then Mr Delay digitally penetrated his 9 year old granddaughter's vagina. She felt pain in her vagina.
5. Mr Delay made admissions to the allegations when spoken to police under caution.

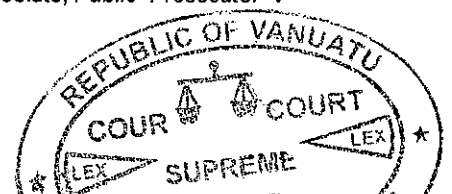
### Applicable legal principles

6. 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
7. The primary factors relating to bail are the risks of:
  1. failing to appear.
  2. interference with witnesses or evidence.<sup>1</sup>
  3. offending if bail is granted.
8. Other relevant factors include:
  1. the seriousness of the alleged offences.<sup>2</sup>
  2. the presumption of innocence. The presumption of innocence is a right enshrined by Article 5 of the Constitution.<sup>3</sup>
  3. the nature and quality of the evidence,
  4. the stage of the investigation and

<sup>1</sup> 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.

<sup>2</sup> 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.

<sup>3</sup> 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.



5. The defendant's personal circumstances.

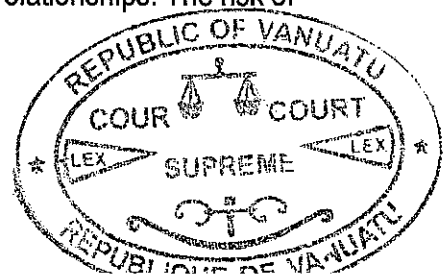
9. It should be noted that these factors are non-exhaustive. An assessment as to whether bail should be granted in an individual case will always be fact specific.
10. It is a matter of balancing and weighing all relevant considerations but particularly the risk factors in order to assess whether bail should be granted. There will always be a tension between the presumption of innocence and other relevant considerations.

### Discussion

11. Counsel have proceeded on the basis that s 60 of the Criminal Procedure Code is applicable. It does not, as none of the offences before the Court have life imprisonment as a maximum penalty. The principles set out above are to be applied.
12. Mr Delay has been in custody for over a year, which is the main plank of the bail application. His age is a factor also advanced. Mr Delay proposes to live with his daughter Annie Delay in Lakatoro, Malekula. He will be under his daughter's supervision. He promises to comply with any bail conditions imposed by the Court. Further, that there is no trial date. The matter has been unable to be reached and on 1 August 2025, Trief J adjourned the matter to the next Court Tour. The date is uncertain.
13. The prosecutor opposes bail. The grounds for opposing bail are the risk of interference with witnesses and the protection of the community. It is submitted that the risk of interference with witnesses arises from the close family relationships, particularly given the power imbalance between Mr Delay and his young and vulnerable grandchildren. The community protection concern is really a contention that there is a risk of offending if Mr Delay is granted bail. Firstly, his daughter lives in Lakatoro in close proximity to other children. Also, there are young grandchildren living at his daughter's address. Given that the alleged offending involves Mr Delay's grandchildren, Ms Siri submits his other grandchildren and children in the community are potentially at risk.
14. I accept that the seriousness of the offending alone does not displace the presumption of innocence.<sup>4</sup> Mr Delay 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. The context of the offending is of concern. Mr Delay is alleged to have opportunistically sexually assaulted two of his young children. The complainants by virtue of their age, and the family relationship are vulnerable.
15. In this case, I consider that the key primary risks are a risk of interference and a risk of offending. The risk of interference arises from the close family relationships. The risk of

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<sup>4</sup> See *Public Prosecutor v Jeajea* [2016] VUSC 159



offending relates to the fact that Mr Delay proposes to live with his daughter and in a home where there are young children. He is alleged to have sexually assaulted two of his grandchildren. As well, there are children in close proximity. I do not consider that the identified risks can be mitigated to an acceptable level so that bail can be granted. It is naïve to think that Mr Delay could be supervised so closely that these risks can be managed.

16. This is concerning alleged offending. The complainants are 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.
17. Accordingly, bail is refused.

**DATED at Port Vila this 5th day of September 2025  
BY THE COURT**

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Justice M A Mackenzie

