

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

**Criminal**  
**Case No. 25/2314 SC/CRML**

**BETWEEN: POLYCARPE VIRATIRO**  
Applicant

**AND: PUBLIC PROSECUTOR**

Date of Bail Hearing: 8 September 2025  
Before: Justice M A MacKenzie  
Counsel: Mr E Molbaleh for the Applicant  
Mr T Karae for the Respondent

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### **DECISION AS TO BAIL**

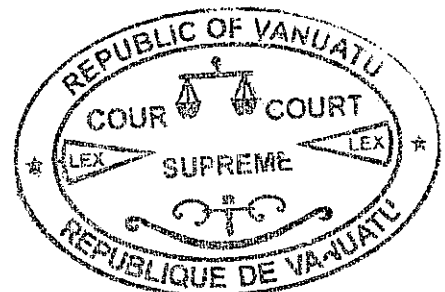
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#### **Introduction**

1. Mr Viratiro makes an application for bail. He faces 4 charges. They are:
  - charges of sexual intercourse without consent contrary to ss 90(a) and 91 of the Penal Code [CAP 135].
  - 1 charge of unlawful sexual intercourse contrary to s 97(2) of the Penal Code [CAP 135]
  - 1 charge of act of indecency with a young person contrary to s 98A of the Penal Code [CAP 135].
  - 1 charge of possession of child pornography contrary to s 71(1) and (2)(e) of the Cybercrime Act No.21 of 2022.
  - 1 charge of threats to kill.

#### **Result**

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



### The alleged offending

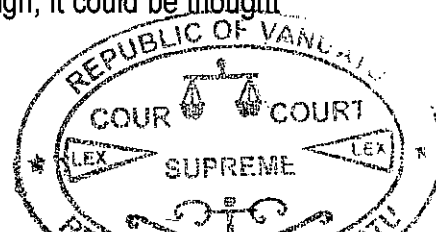
3. The complainant is aged 13 years. Mr Viratiro is aged 20 years and living next to the complainant had her family at Freshwota 5.
4. The alleged sexual offending started in 2024, when Mr Viratiro is alleged to have sexually assaulted the complainant and took a video clip of the incident. The alleged offending continued into 2025. Each time Mr Viratiro wanted to have sexual intercourse with the complainant he would threaten to send the video clip to her mother and friends, if she refused. The complainant was afraid, so would comply. She would go to Mr Viratiro's house and be sexually assaulted.

### Relevant statutory provision and applicable legal principles

5. 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.
6. 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.
7. 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."*

8. 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.

9. 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.

10. 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

11. 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.

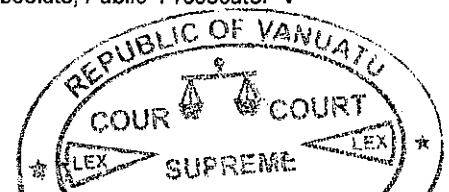
12. Other relevant factors include:

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,

<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.



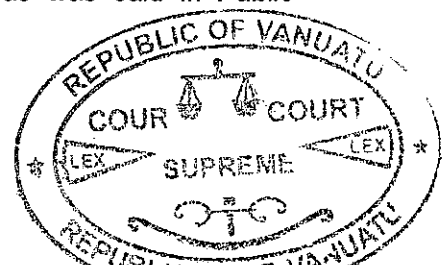
4. the stage of the investigation and
  5. The defendant's personal circumstances.
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13. It should be noted that these factors are non-exhaustive. An assessment as to whether bail should be granted in an individual case will always be fact specific.
  14. 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

15. The starting point is that Mr Viratiro is ineligible for bail because s 60 of the CPC applies. He therefore needs to demonstrate good or special reasons for bail to be granted as he faces a charge of rape.
16. Mr Viratiro applies for bail. He proposes to live at Stade area with a family member Bibi Mabontaba. He seeks bail to be able to support his young partner, who needs his support due to health issues and that they have a 3 month old baby. Mr Viratiro also has a small business baking and selling bread that he would like to continue in order to provide for his family. Mr Viratiro's partner filed two sworn statements. She had a caesarean section and feels weak. Attached to her statement filed on 26 August 2025 is a medical certificate. As at 21 August 2025, Ms Onemas felt weak and had infected sores under both arms.
17. The prosecutor filed thorough submissions opposing bail, and submits that bail should not be granted, as no special or good reasons are advanced. Further, that there is a high risk of interference with witnesses or evidence and a risk of offending if bail is granted. The risk of interference arises from the fact the police investigations are ongoing and police have yet to interview potential witnesses, that there is a close relationship between the complainant and Mr Viratiro, threats have been made to compel the sexual activity and the complainant feels unsafe. In addition, the complainant's family and Mr Viratiro's family live next door to each other at Freshwota 5. The complainant lives between Freshwota and Malapoa. In terms of the risk of offending if bail is granted, the prosecutor submits that Mr Viratiro made admissions as to repeated sexual intercourse with the complainant and there is a video clip showing him having sexual intercourse with the complainant.
18. I accept that the seriousness of the offending alone does not displace the presumption of innocence.<sup>4</sup> Mr Viratiro is entitled to the presumption of innocence, a fundamental right enshrined in Article 5 of the Constitution. However, as was said in *Public*

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



*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 Viratiro is alleged to have treated the complainant as his sexual plaything, taken a video of the sexual activity and threatened her with it, to compel compliance with his sexual requests. If accepted by the Court when the substantive matter is dealt with, that is deliberate and highly manipulative. The complainant by virtue of her age, and the family relationship is vulnerable.

19. In this case, I consider that the key primary risk is a risk of interference given the alleged manipulative behaviour of Mr Viratiro to ensure the complainant had sex with him, the close family relationship, and close proximity even if the complainant does not live at Freshwota all the time. There is a real possibility Mr Viratiro may try to dissuade others from giving evidence given the apparent strength of the prosecution case, as detailed in the prosecutor's submissions. I do not consider that this risk can be mitigated to an acceptable level so that bail can be granted. I lack confidence that Mr Viratiro will stay away from the complainant given the nature and circumstances of the alleged offending.
20. I accept that family circumstances can amount to special or good reasons. I have sympathy for the position of Mr Viratiro's partner. But I do not consider that in the particular circumstances here that amounts to a special or good reason. The health issues should resolve themselves. She sought out medical assistance for the infection under her arm so it should only be a temporary issue. That she needs or would like help with the baby is not a good reason.
21. 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 risk I have identified can be adequately mitigated by bail conditions, as proposed.
22. Further, while I acknowledge Mr Viratiro is entitled to the presumption of innocence, s 60 of the CPC applies. It is for Mr Viratiro 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 8th day of September 2025  
BY THE COURT**

Justice M A Mackenzie

