

CF

PUBLIC PROSECUTOR

V

BEX TAVO WEA

Date of hearing: 19th February 2024
Before: Magistrate P. Toaliu
Counsels: Aru. J for the Public Prosecutor
Dehinavanua. C for the defendant
Defendant in person

RULING ON BAIL

1. On 5th February 2024, the defendant was arrested and taken before the Magistrate court on one charge of cultivation of cannabis contrary to sections 4 & 17 of the Dangerous Drugs Act [CAP 12].
2. The matter was listed on 19th February 2024 for PI.
3. Ms. Dehinavanua appeared this morning with an application for bail after Mr. Aru had applied for the matter to be adjourned to a later date due to incomplete investigation. She had filed a bail application on 24th February 2024 on behalf of the defendant urging several grounds in support including the defendant's past unblemished record. The defendant also offers several conditions that he will abide by if bail is granted.
4. In opposing the application for bail, Mr. Aru pointed to the seriousness of the offending. However, as pointed out by Fatiaki J in *Public Prosecutor v Jeajea* [2016] VUSC 159, the seriousness of the offence alone is insufficient to overcome the presumption of innocence that defendants enjoy, and which is in their right under the Constitution.
5. The second ground for opposition raised by the Prosecution was the risk of interference with prosecution witness. This risk remains a possibility and nothing more and such a risk may be reduced by appropriate conditions.
6. The third ground for opposition is the risk of re-offending. Mr. Aru pointed out that the defendant would be returning to the place where the offending occurred; at Bukura and therefore there is a risk of re-offending. Again, there is always a risk of this happening but that too can be controlled and reduced by appropriate conditions.
7. The fourth ground for opposing the application for bail is the incomplete investigation. I concur with Fatiaki J in *PP v Jeajea* at [3] – [6] that an incomplete investigation is not a proper ground for refusing bail as charges should not be laid if investigations remain incomplete.



8. Although I accept that the grant of bail is not a right of an accused person, nevertheless, given the constitutionally protected fundamental rights and freedoms of every individual, the prosecution bears a heavy onus in opposing any application for bail. This means that merely verbalising common risk factors is not enough, there must be some evidence produced to the court to influence its discretion to refuse bail.
9. I also consider the case of *PP v Festa* [2003] VUSC 65 on the risk of the defendant's unlikely appearance in court. The defendant resides in Bukura with his wife who has sworn to be his surety and there is nothing in either submission to suggest that there is a high risk that the defendant would not appear in court at the next court hearing.
10. Considering the foregoing and after careful considerations of the bail application and opposing submission, I am satisfied that the defendant is not a flight risk and hereby direct that he be released on bail on the following conditions:
 - a. He must not leave the island of Efate
 - b. He must not re-offend whilst on bail;
 - c. He must not interfere with prosecution witnesses;
 - d. He must reside at all times with his wife Glenda Yolin at Bukura Area on Efate;
 - e. He must sign in at the police station in Port Vila every Friday between 8:00am in the morning and 4:30pm in the afternoon;
 - f. He must attend court whenever required;
2. If he breaches any of the above conditions, he shall be immediately arrested and be incarcerated until the conclusion of this matter.
3. I adjourn this matter for PI on 7th March 2024 at 9:00am in the morning.

DATED at Port Vila this 19th Day of February 2024

BY THE COURT

P Tealin

Magistrate

