

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

**Bail Application No. 25 / 2013**

**JEFFERY MANIPEN**

**V**

**PUBLIC PROSECUTOR**

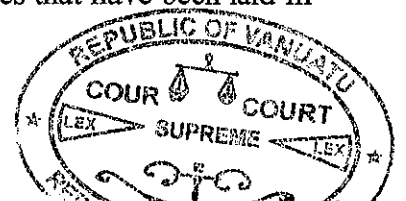
**Hearing:** 8 October, 2013  
**Before:** Justice Robert Spear  
**Appearances:** Robin Tom Kapapa for the Applicant  
Ken Massing for the Prosecution

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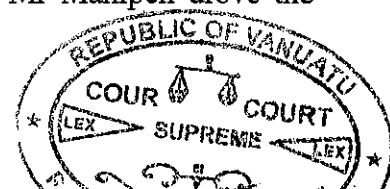
**ORAL JUDGMENT**

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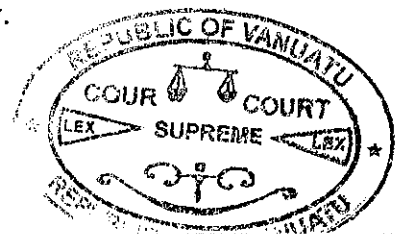
1. This is an application for bail.
2. Mr Manipen was arrested on Monday 7 October 2013 and charged with one count of unlawful sexual intercourse without consent and an allied charge of threatening to kill. The application for bail is supported by two sworn statements.
3. Alice Manipen states that she is the wife of the applicant and that they have five children aged between 12 years and 2 years. Furthermore, Mr Manipen is the main breadwinner for the family. They operate a bus in respect of which they have a debt to King Motors and the ANZ. While Mrs Manipen does not say so explicitly, it is clear that she looks to her husband to drive the bus and thus provide an income for the family.
4. There is a further sworn statement from the applicant's brother Nokai Manipen which simply produces a copy of the charges that have been laid in the Magistrate's Court.



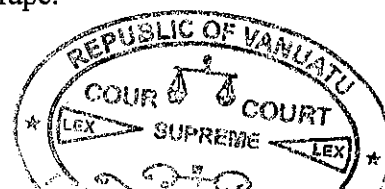
5. Mr Massing explains that the investigation is still at a relatively early stage. To assist the Court, he has brought to Court the police officer in charge of the case, Constable Sandrina Biao, - a member of the CID at Port Vila. Additionally, Mr Massing has provided the Court with a summary of facts that he has been put together in the very short time he has had to prepare for this hearing. This has enabled me to gain an understanding of the prosecution case against Mr Manipen.
6. The case against Mr Manipen is as follows. He is a bus driver who was operating a bus in the Port Vila area on the morning of 1 October 2013. At approximately 8.00 am, while on his way to drop his wife and children off at school, he stopped near Malapoa to pick up the complainant who wanted to travel to the abattoir near Mele Village. The defendant dropped off his wife and children at their schools. Mrs Manipen is a teacher at Vila North Primary School.
7. Mr Manipen was heading towards Mele when he stopped to pick up some tourists and he took them to Mele Bay by the Beach Bar. After the tourists were dropped off, instead of driving towards the abattoir, Mr Manipen drove to the Mele Maat area which is in the opposite direction. During that short journey, the prosecution say that Mr Manipen informed the complainant that he wanted to have sexual intercourse with her. She said that she was not interested and that she wanted to be dropped off in town so that she could get a bus that would take her to the abattoir. The applicant said that he would take her to town and drop her off so she could catch another bus.
8. However, Mr Manipen then turned down a road that led into the bush and drove for some distance before stopping the bus. He demanded that the complainant get out of the bus. She refused to do so and he then physically dragged her out of the bus. In doing so he threatened to kill her if she did not lie down on the ground and remove her clothes. Eventually she did and he had full sexual intercourse with her. Afterwards, Mr Manipen drove the complainant to the abattoir and dropped her off.



9. The complainant was met by her friend Leipakoa Willie who states that the complainant was distressed and crying. Furthermore the complainant immediately told Ms Willie what Mr Manipen had done to her.
10. The complainant made a complaint to the police on the following Monday.
11. The police were able to confirm the identity of the bus driver to be Mr Manipen by going to Vila North Primary School and interviewing the applicant's wife. She was able to confirm that her husband was a bus driver and that he had indeed dropped the children and her off at school that Friday morning while there was a passenger in the car.
12. Mr Manipen and the complainant did not know each other before that morning. Mr Manipen is in his early 30s and the complainant is 45 years of age.
13. Accordingly, it would appear that there is a strong case that places the complainant in the defendant's bus that morning. The case will then depend principally on whether the complainant's account of events is accepted by the Court. There do not appear to be any independent witnesses which, of course, is not unusual for offending of this nature. However, the evidence of her recent complaint to Leipakoa Willie can of course be taken into account as to the credibility of the complainant's account of events.
14. Curiously, the police have charged Mr Manipen who is in custody of course but they have not yet interviewed him. I am told that they propose to interview him tomorrow. Be that as it may, it is surprising that there is no statement from Mr Manipen in support of the application for bail. It would be helpful if the Court knew whether he accepts that the offence occurred, whether he contends that the sexual intercourse occurred consensually or whether he denies that anything occurred at all. Mr Kapapa states that he has had difficulty gaining access to the defendant which I find curious as a lawyer must have ready access to a client in custody.



15. Applications for bail need to be considered having regard to a number of factors. First and foremost, account needs to be taken of the nature or seriousness of the charge. The three usual considerations are:-
- a) Whether the defendant can be considered a flight risk,
  - b) Whether the defendant might interfere with witnesses;
  - c) Whether the defendant might reoffend.
16. That is not an exhaustive list of the criteria that the Court has regard to as it makes the assessment as to whether the risk to the public or any person is too great for bail to be granted . Other factors, if relevant, can be taken into account including the personal circumstances of the defendant.
17. In this case, Mrs Manipen states that she wants him home so that he can continue to work as a bus driver and generate income for the family. If bail was to be granted there is, however, no way that he would be allowed to drive a bus while this matter is resolved. This Court and this community has been plagued by cases involving sexual offences having been committed by bus drivers on their passengers. This Court would be negligent in its obligations to the public if were to allow the defendant to drive a bus while these charges are pending. The safety of the public must be a real concern. If it is eventually proven that Mr Manipen committed these offences then it is clear that he would present an on-going risk to public safety if allowed to resume his public transport occupation.
18. I am appreciative of the fact that the police investigation is continuing. However, having regard to the summary of the case that Constable Biaa has given and the summary of facts that Mr Massing has provided, which I have summarised, it is unlikely that any further evidence of significance will emerge. A medical examination of the complainant occurred on the Monday - that is 3 days after the alleged offence. However, the Court is well aware that a medical examination conducted so long after the alleged offence is unlikely to provide evidence that is proof positive of rape.



19. Whether to grant bail to Mr Manipen involves an assessment of whether there is an unacceptable risk that would be posed by him if on bail. I am somewhat hampered by the fact that I do not understand the position to be taken by Mr Manipen as to the allegations made against him. He might well accept that he committed this offence. Certainly, there appears to be a strong case that the complainant was in his bus that morning. There is no suggestion that the complainant knew the defendant or had some reason to lie about what she says he did to her. Accordingly, unless there is some justification for discrediting the complainant's account of events, there appears to be a good case against him of having committed the rape of a stranger while she was a passenger in his bus. That makes this a serious case of its type and suggests at least that the defendant is a risk to the public.
20. At this stage, I am not prepared to take the risk of having the defendant on bail. However, that may change once the police finish the investigation and/or the defendant is able to provide an explanation as to what he says occurred that morning with the defendant. In this respect, his account of events whether through the interview with the police or by a statement to this Court in support of bail will obviously have significance as it will provide a timeline in respect of which the police can conduct further investigations. I say again I am surprised that he is not been interviewed already.
21. So, at this stage bail is refused. However the applicant has leave to apply again once the police interview has taken place and/or he makes a statement to the Court explaining what he says happened that morning. Of course, he is under no obligation to either answer questions in the course of a police interview or to provide an explanation to this court.

**BY THE COURT**

