

BETWEEN: PUBLIC PROSECUTOR

AND: FRED JUNIOR  
Defendant / Applicant

**Before:** Justice Oliver A. Saksak

**Counsel:** Cecile D Tovor for Accused/ Applicant  
Marie Taiki for Public Prosecutor/ Respondent

**Date of Hearing:** 6<sup>th</sup> March 2026  
**Date of Oral Decision:** 6<sup>th</sup> March 2026  
**Date of Written Decision:** 9<sup>th</sup> March 2026

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**REASONS FOR ORAL DECISION**

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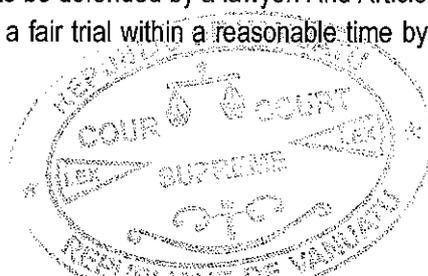
1. I heard Ms Tovor in relation to an application for bail on 6<sup>th</sup> March 2026. I also heard Ms Taiki in opposition to the application.
2. I declined bail and dismissed the application.
3. I now provide reasons for that oral decision.

**Background Facts**

4. The accused was remanded in custody on 7<sup>th</sup> February 2026. The allegation against him is that he had sexual intercourse with a child aged 9 years old at Punaquisu Village, North Efate. The allegations is that sex was forced and without consent. The accused is a 17 year old boy.

**Basis**

5. The application was made relying on Article 5(2) (a) and (b) of the Constitution, and sections 62, 63 and 117 of the Criminal Code Act [ Cap 136].
6. Section 62 provides for imposing special bail conditions Section 63 provides for a bond to be executed in accordance with section 61 to be put up by a person to be released from custody. Section 117 provides for the right of an accused person to be defended by a lawyer. And Article 5 (2) provides protection to an accused person to have a fair trial within a reasonable time by



an impartial and independent Court and be afforded a lawyer, and that the accused is presumed innocent until his guilt is established according to law.

7. As for case authorities reliance was placed on PP v Festa [ 2003] VUSC 65 which establishes that six factors are relevant to bail:-
  - a) Whether there is a risk a defendant will fail to attend Court;
  - b) Whether there is a risk a defendant might interfere with witnesses or other evidence.
  - c) Whether there is a risk the offender may offend while on bail.
  - d) The nature of the offence charged.
  - e) The strength of the evidence and probability of conviction.
  - f) The seriousness of the punishment for which a defendant is liable.
8. The application was opposed by the Prosecution

### **Submissions**

9. It was submitted by Counsel for the accused that there is no risk of the accused interfering with the complainant and prosecution witnesses, and that there is no risk of committing further offences whilst on bail. Counsel acknowledged the seriousness of the offending which attracts a life time imprisonment and further that the case is set for a preliminary inquiry.
10. Ms Taiki submitted the Court should consider the age of the victim being only a 9 year old child, that she was dragged into the nearby business at night by the accused and sexual intercourse was forced on her. Further she submitted the offence for which the accused may be charged attracts a lifetime sentence. She submitted that there is a risk of interference with the victim and witnesses and of further offending. Further that investigations have not completed but that the case is set down for Preliminary Inquiry to be held on 11<sup>th</sup> March 2026. Finally she submitted based on PP v Whitford that no adequate reasons have been demonstrated to warrant the grant of bail.

### **Discussion**

11. Firstly I considered the application to be premature. The accused has not yet been charged. Investigations are still ongoing and a Preliminary Inquiry is set down on 11<sup>th</sup> March 2026, only some 5 days away. This makes the application pointless and premature.
12. Secondly the accused is likely to be charged with sexual intercourse without consent, a very serious offence attracting a maximum sentence of life imprisonment. The accused has acknowledged this factor.



13. Thirdly section 60 of the CPC Act is relevant but Counsel for the Accused made no reference to the provision. It states:

**"POWER IN CERTAIN CASES TO RELEASE FROM CUSTODY**

*60. (1) When any person, other than a person accused of an offence punishable by life imprisonment, is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such court to enter into a bond in writing, with or without conditions, for his subsequent appearance before the court, such person may be temporarily released from custody on bail."*

*(2) The conditions of such release shall be fixed with due regard to the circumstances and shall not be oppressive or unreasonable.*

*(3) Notwithstanding anything contained in subsection (1) the Supreme Court may in any case direct that any person be released from custody on bail or that the conditions required by the Magistrates' Court or a police officer be amended so as to be less onerous."*

14. Fourthly the victim was stated to be only a nine year old child. It is claimed she was dragged into the bushes at night and force was used against her. Her position should also be considered. The public interest for this vulnerable child and others in her position must be of paramount consideration. And this prevails over the individual right of the accused.
15. Fifthly the surety provided by the grand mother is inadequate. Just being a grand mother is not enough. There must be evidence of a real relationship between her and the accused. There must be evidence of how many times in the past the accused has lived with her. There must be evidence of how many times in the past the accused has lived with her and has consistently obeyed and followed her instructions to dos and to not dos.
16. Sixthly the evidence of the accused is insufficient. It does not state whether he is attending school or college or whether he has elderly parents who are highly dependent on him for their everyday needs. I accept therefore that the accused has not demonstrated any special reasons to warrant the application for bail.
17. Finally I am not satisfied about the guarantee given that risk of interference with the complainant or prosecution witnesses. And I am not satisfied about the guarantee given that there is no likelihood of the accused reoffending.
18. For those reasons the application was dismissed.

**DATED AT Port Vila this 9<sup>th</sup> day of March 2026**

**BY THE COURT**

**Hon. Justice Oliver A Saksak**

