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**IN THE SUPERIOR COURT**  
**OF THE**  
**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

COMMONWEALTH OF THE	)	CRIMINAL CASE NO. 00-0527C
NORTHERN MARIANA ISLANDS,	)	
Plaintiff,	)	<b>ORDER GRANTING</b>
vs.	)	<b>PLAINTIFF'S MOTION TO</b>
	)	<b>MODIFY CONDITIONS</b>
	)	<b>OF RELEASE</b>
JOSEPH DIAZ SABLAN,	)	
Defendant.	)	
	)	

This matter first came on for hearing on May 22, 2002 pursuant to Plaintiff's Motion to Modify Bail. Defendant responded with a Motion to Strike Plaintiff's Motion based on an alleged violation of Com. R. Crim. P. 45(a) and (d) requiring a five (5) day notice prior to hearing because Defendant only received a four day notice.<sup>1</sup>

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<sup>1</sup> The Court denied Defendant's Motion to Strike from the bench at the May 24, 2002 hearing. All parties when filing motions in this Court are cautioned to adhere to the Court rules.

**FOR PUBLICATION**

1 Defendant's attorney was at another court when this matter arose, and the Court therefore,  
2 continued the hearing until May 24, 2002, at which time the Court heard arguments from both parties.  
3  
4 The Government was represented by Aaron Romano, Assistant Attorney General and the Defendant,  
5 Joseph Diaz Sablan, was represented by Jeffrey Moots, Assistant Public Defender.

### 6 **I. OPINION**

7  
8 The Commonwealth of the Northern Mariana Islands [hereinafter COMMONWEALTH]  
9 moves the Court to modify the conditions of release of Defendant Joseph Diaz Sablan [hereinafter  
10 SABLAN].

11  
12 Under a plain reading of the Commonwealth Criminal Code Section 6402(b), the Court finds  
13 that SABLAN is not entitled to bail after conviction at this time. 6 CMC § 6402(b).

### 14 **II. BACKGROUND**

15  
16 SABLAN was arrested on or about November 24, 2000 and charged with rape, oral copulation  
17 and sexual abuse with a child. SABLAN posted an appearance bond with the Court and was released.

18  
19 Following a jury trial, a judgement of conviction was entered against SABLAN. SABLAN was  
20 found guilty of oral copulation in violation of 6 CMC § 1307(a) and guilty of sexual abuse of a child in  
21 violation of 6 CMC § 1311 (a). SABLAN is scheduled to be sentenced on June 20, 2002.

22  
23 The COMMONWEALTH now moves the court to have SABLAN remanded to custody,  
24 pending sentencing, even though he was granted bail prior to conviction.

### 25 **III. DISCUSSION**

26  
27 The issue of bail after conviction is expressly addressed in both the Commonwealth Code and  
28 the Commonwealth Rules of Civil Procedure. However, the Court notes a direct conflict between these

1 authorities.

2 Under Section 6402(b) of Title 6 of the Commonwealth Code, “[a]fter conviction bail may be  
3 allowed only if a stay of execution of the sentence has been granted and only in the exercise of  
4 discretion by a court authorized to order a stay or by a judge thereof.” 6 CMC § 6402(b).  
5

6 Under Rule 46(c) of the Commonwealth Rules of Criminal Procedure, “[a] person who has  
7 been convicted of an offense and is either awaiting sentence or has filed an appeal shall be treated in  
8 accordance with the provisions of Rule 46(a)(1) through (6).” Com. R. Crim. P. 46(c).  
9

10 Under 6 CMC § 6402(b), after conviction bail is granted only in very limited circumstances,  
11 while after conviction bail is granted more broadly under Rule 46(c)<sup>2</sup>.  
12

13 However, the statute will prevail even though the rule and statute are in conflict. Where a statute  
14 conflicts with a rule of court, the statute prevails. *See Commonwealth v. Bordallo*, 1 N.M.I. 208, 217  
15 (1990). Thus, 6 CMC § 6402(b) prevails here.  
16

17 A plain reading of 6 CMC § 6402(b) is most appropriate. "A basic principle of construction is  
18 that language must be given its plain meaning." *Tudela v. Marianas Pub. Land Corp.*, 1 N.M.I. 179,  
19 185 (1990).  
20

21 Here, a plain reading of 6 CMC § 6402(b) allows bail after conviction **only** where: (1) a stay of  
22 execution of the sentence has been granted; **and** (2) only in the exercise of discretion by the court  
23 authorized to order a stay or by a judge thereof. Under a plain reading of the statute, a stay of  
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27 <sup>2</sup> Generally, the provisions of Rule 46(a)(1) through (6) provide criteria for determining conditions of release  
28 that will reasonably assure appearance of the person charged.

1 execution of the sentence must be granted before the bail, after conviction may be granted.

2  
3  
4 In the present case, this mandatory threshold requirement has not been met. At present, there is  
5 no sentence from which a stay is eligible. SABLAN will not be sentenced until June 20. Because  
6 SABLAN has not been granted a stay of execution of a sentence, 6 CMC § 6402(b) is not invoked  
7  
8 and bail after conviction is not appropriate at this time.

9 **IV. CONCLUSION**

10 The Court must follow the mandate of the statute, and therefore, the COMMONWEALTH'S  
11 motion to modify bail is **GRANTED**. Defendant SABLAN is hereby ordered into custody pending  
12 sentencing and shall report to the Department of Corrections on or before 8:00 a.m. on June 5, 2002.

14 So **ORDERED** this 31st day of May, 2002.

17 /s/  
18 DAVID A. WISEMAN, Associate Judge