

**The Republic v Marday & Or
(2004) SLR 106**

Ronny GOVINDEN for the Republic
France BONTE for the First Accused
John RENAUD for the Second Accused

Ruling on Application for Bail delivered on 23 June 2004 by:

RENAUD J: The Counsel for the two accused have filed applications to this Court praying that the two accused be released on bail.

The particulars of the offence are as follows.

The two accused have been jointly charged with the offence of abduction contrary to and punishable under Section 244 as read with Section 23 of the Penal Code and were brought before the Court for the first time on 11 May 2004. Learned Counsel for the Prosecution had by then filed an application moving the Court to remand both accused in custody until the conclusion of the trial by extending such orders every 14 days in accordance with Section 179 of the Criminal Procedure Code. The reasons for making the application were stated thus:

- (a) The accused are charged with a very serious offence punishable with a maximum custodial sentence of 7 years imprisonment.
- (b) That the main eye-witnesses of the prosecution and virtual complainant are known to the accused and in the event that the accused are released on bail they would harm, threaten or intimidate them.

In support of the Application, the Prosecution had in addition to the reasons stated above, attached an affidavit sworn to by Police Sub Inspector Sonny Legate stating substantially the same facts as above.

The Application was duly served on both accused on the same day prior to their coming to Court. When the matter came up before His Lordship the Chief Justice, Ms. K. Domingue appearing for the accused, opposed the application and instead sought that the accused be enlarged on bail with conditions. After hearing the Investigating Officer, S.I Legate on oath, His Lordship the Chief Justice ruled that the two accused be remanded in custody for 14 days and that they had to appear before the Court on 25 May, when an early date for trial will be fixed. In the intervening period the Prosecution was to serve all the documents pertaining to the case, on Counsel for the accused. The two accused accordingly appeared on 25 May, but did not take the plea and were remanded for a further period of 14 days up to 7 June 2004. The Prosecution having not been able to serve the documents, was again asked to do so in the meantime.

On 7 June, 2004 Mr. F. Bonte appearing for the First accused and Mr. J. Renaud appearing for the Second accused, objected to the application of the Prosecution for the further remanding of the two accused in custody. They were advised to file proper application before the Court and the two accused were remanded for a further 7 days up to 14th June, 2004.

Learned Counsel for the accused filed applications for bail supported by affidavits with copy of statements on which the Prosecution grounded the charge. The principal grounds are that:

- (i) The reasons for the remand of the Accused as given to the Supreme Court are no longer tenable, given the length of time that has elapsed since they were first remanded in custody;
- (ii) The evidence against the Accused, is extremely weak and there is no likelihood of a conviction;
- (iii) Given the state of the evidence, no further charges are anticipated; and
- (iv) The Accused have no previous convictions.

They argued that the evidence available to the Prosecution in support of the charge is so weak that no Tribunal properly informed will record a conviction against the accused. The Accused are being remanded in custody at the Long Island Prison and the conditions of the Prison do not provide for the separation of the Accused from the convicts, contrary to Article 18(11) of the Constitution.

It was further contended on behalf of the two accused that the objections to bail would be met by the following conditions:

- (i) The First Accused lives with his parents at Quincy Village, not far from Victoria and will stay with his parents, and the Second Accused lives at La Retraite, not far from Victoria;
- (ii) The accused are in a position to provide a surety of R3,000 each;
- (iii) A curfew may be imposed that the Accused remain at home until the determination of the trial; and
- (iv) The Accused may be prevented from obtaining travelling documents.

Mr. Camille Learned State Counsel appearing for the Prosecution maintained that there has been no change of circumstances since the two accused persons were first

remanded. The Police are still pursuing its investigations and two more suspect are still at large and yet to be apprehended. The release of the two present accused will further compound the impediments that the Police are facing in their efforts to arrest the two fugitives.

To establish its contentions, the Prosecution presented ASP Cecile to testify on oath. He reiterated that the Police are still pursuing two more suspects who are evading arrests and if the two present accused are released on bail, there is the likelihood that they may meet and discuss the case. However, the Police have sufficient information and was hopeful that the arrests of the two who are now known to the Police would be made quite soon. The main witness is still apprehensive and fears for his safety and security should the Accused be enlarged on bail, in view of the prior threats they made upon him at the time of committing the offence.

When considering application for remanding an accused in custody, what is foremost in my mind is that such measure is not a punishment for having allegedly committed a serious offence, nor is it imprisonment in the interim pending final determination of the trial. This cannot be so, as our Constitution has accredited all accused as being innocent until proven guilty. Remand in custody is a deprivation of the liberty of a citizen whom the Court may order as a matter of exception in certain circumstances, of particular relevance is Article 18 (2)(b) of the Constitution.

The Court must act judiciously when exercising its discretion to remand an accused in custody. In the case of *Republic v Gerard Kate* CR50/2004, I set out certain observations as to my reasoning for remanding the accused after having been charged with a serious offence. It is not automatic that once an accused is charged with any serious offence that it should follow that that accused must be remanded in custody. It may not be sufficient reason to remand an accused simply to allow the Police to perform its duties more easily. In my view an accused may be remanded in custody if the offence with which he/she is charged, (save for a capital offence) is of such a nature that society abhorred because it puts people in fear and impedes their safe and peaceful life pattern. A person who has allegedly conducted himself/herself in such manner that it would be in the best interest of society to have him or her removed and be made to live separately and apart from others, because of his or her apparent lack of respect for the rights of other members of society. As such those in remands pending trial are not to be treated as convicts. The Court is always mindful of the prevalence and circumstances of crime in society that is detrimental to peaceful and orderly living. Everyone is entitled to enjoy fundamental rights but such enjoyment ought not to impact negatively on society, such as creating fear and panic which at times tends to become the order of the day. The prevalence of certain serious crime is now of major concern, particularly - homicides; drug related offences; sexual assaults on small children; sexual assault using threat or violence; burglary, housebreaking, whether with violence or not; robbery with violence; offences which have a negative impact on the tourism industry committed particularly on the person of a tourist; are offences which society at present strongly abhorred. It is evident that citizens of this country do not feel at all comfortable to have alongside them, persons who had allegedly gone to the extent of having abuse

their rights in those areas. The Court is cognisant of the prevalence of such offences and will not hesitate to exercise its discretion by placing elsewhere such persons as to allow other reasonable members of society to enjoy their fundamental rights too.

Abducting others for the purpose of extracting material gains is an offence which is dissimilar to robbery and is not so prevalent in our society at present.

In the present case, I have given very careful consideration of the facts and evidence presented to this Court by both Counsel for the Prosecution and Defence, as well as the evidence of the Police witnesses. It would appear that the evidence is more than what meets the eyes in this particular case.

In the final analysis, I am of the view that the two accused persons should be allowed on bail subject to stringent conditions that this Court will impose. These conditions are:

- (i) The First Accused shall live at his home at La Retraite, Mahe, subject to the owner or lessee of the house consenting and permitting him to do so and signified in writing to this Court, that a person shall also act as his surety by signing a bond in the sum of R5,000;
- (ii) The Second Accused shall live with his parents at Quincy Village, subject to his parents consenting and permitting him to do so and signified in writing to this Court, and a parent shall act as his surety by signing a bond in the sum of R5,000;
- (iii) The First and Second Accused shall each deposit to the Supreme Court's Registry a sum of R10,000 in cash as surety, which sum shall automatically be forfeited to the Republic in the case of any breach of any of the conditions set out in this order, by any of the two accused;
- (iv) The First Accused shall report at the Anse Etoile Police Station and the Second Accused shall report at the Victoria Police Station following the most direct route from their respective homes to the said Police Station and back in the company of the surety every Wednesday between 1400 and 1500 hours;
- (v) A curfew is henceforth imposed on both the First and Second Accused whereby the First Accused shall remain at his home at La Retraite, Mahe and the Second Accused shall remain at his home at Quincy Village, Mahe at all times of the day or night until the determination of the trial except when travelling to report to Victoria or Anse Etoile Police Station or to this Court as the case may be;

- (vi) Both the First and Second Accused shall not in any way interfere with, threaten, molest or communicate with the complainants and their immediate families; with other witnesses; with other suspects, either in person, by mail or telephone; and with the accused and their families by any means of communication;
- (vii) Both the First and Second Accused shall surrender to the Registrar of the Supreme Court any travel document they hold and they are not allowed to leave the jurisdiction of this Court;
- (viii) The Immigration Authority is directed not to issue either of the two accused any travel document and not allow them to exit at any Immigration point hence preventing them from leaving the jurisdiction of this Court.
- (ix) A breach by either of the two accused of any of the conditions set out above shall, in addition, result in the accused being committed to custody until the conclusion of the trial.

Upon the accused meeting the conditions stated above to the satisfaction of this Court, I shall accordingly grant their applications for bail. In the meantime the two accused shall be remanded in custody for a further period of 14 days or until compliance with the bail conditions when the accused will be released.

Record: Criminal Side No 59 of 2004