IN THE SUPREME COURT OF SEYCHELLE

THE REPUBLIC

VS.

VALLIPURAM MURALI (Accused)

Criminal Side No. 30 of 2007

The Attorney General Mr. Fernando assisted by Mr. Camille for the Republic
Mr. Hoareau and Mrs. Antao for the Accused

RULING

Gaswaga, J

This is an application to vary the bail terms set by the court on the 22nd October, 2007. It is submitted by the defence counsel that the said terms or conditions are not reasonable or legal as required by Article 18 (7) of the Constitution. In particular, the order to deposit a sum of USD 260,000.00 before the accused's enlargement on bail was considered unreasonable because the said amount, if converted into rupees, would be almost equivalent to the alternative sentence of the fine of SR. 3 million prescribed in Section 57(1)(a) of the Anti-Money Laundering Act, 2006 under which the charges are brought. Further, that according to Section 17 of the Central Bank Act, Cap26 the unit of currency of Seychelles shall be the Seychelles Rupee and as such there was no justification for the accused to deposit cash bail in a different currency namely United States Dollars.

Article 18 (7) reads –

> "A person who is produced before a Court shall be released, either unconditionally *or upon reasonable conditions*, *for appearance at a*

> *later date for trial or for proceedings preliminary to a trial except where the court, having regard to the following circumstance, determines otherwise.....”*

“Reasonable conditions” here would require a court to summon its judicial mind and carry out a proper consideration and evaluation of all the surrounding factors of the case together with the nature of offences at hand as well as the situation and circumstances of the applicant, as far as they are known, and where possible the Court could inquire into the applicant’s means and antecedents.

The accused is a foreigner and was the managing director of Hospitality Supplies Ltd the company cited in the charge sheet. He stands charged with three counts of (1) Fraudulent appropriation of company property by an officer contrary to and punishable under Section 314(a) of the Penal Code, Cap 158, (2) Money laundering contrary to Section 3(1)(a) and punishable under Section 57(1)(a) of the Anti-Money Laundering Act of 2006 and (3) Corrupt practices contrary to and punishable under Section 373(a) of the Penal Code, Cap 158. It is worthy noting that there are two other files (Criminal Side No. 36 of 2007 and Criminal Side No. 37 of 2007) also related in one way or another to this one that are before the same court.

The substance of the charge or subject matter in all the three counts of the current charge sheet refers to transactions involving a sizeable amount of money and wholly executed in United States Dollars. As rightly submitted by the learned Attorney General, the record reveals that the defence counsel proposed the figure of United States Dollars 260.000.00 as a cash bail deposit to secure the accused’s release. This sum has to date not been paid.

In these circumstances, in my view, it would not be unreasonable or strange at all for cash bail terms to be set out in US Dollars and at that tune. Moreover, there

exists no law prohibiting the imposition of such terms in a bail application moreso, in such perfect conditions. The Central Bank Act merely mentions the unit of currency of Seychelles but it is irrelevant to these proceedings. It does not impose any restrictions nor define which transactions should be conducted in what currency. The prescribed sentence (both fine and custodial) is just, but one of the factors to put into account when not only granting but also laying the conditions for bail. For instance, a cash bail deposit could be well over and above the fine involved if in the mind of the court the offences are regarded to be of a grave nature or where it is highly probable, for one reason or another that the applicant may not return for his trial. There is no formula to be followed as the entire exercise is left to the good sense of judgment of the court to weigh the prevailing circumstances. Though not binding, proposals on conditions of bail could be made by any or all of the counsel to the court. However, an applicant who finds the conditions to be unaffordable, unreasonable or excessive is free to apply for a variation thereof.

The grounds advanced herein for the variation are not that convincing as already discussed but like I stated in the case of Rep vs. Randy Bradburn Criminal Side No. 54 of 2006 *"where a court of law is minded to enlarge an accused on bail should do so either unconditionally or on terms or conditions that are reasonable and can be afforded and satisfied by the applicant. See Article 18 (7) of the constitution. An attempt should be made to look into the circumstances of the applicant as far as possible otherwise high unaffordable bail terms would defeat the very purpose of enjoyment of the right to bail intended by the constitution."* It therefore remains incumbent upon the Court, in its wisdom, to carefully re-evaluate and see to it that reasonable conditions affordable by the applicant are imposed but without suppressing or compromising the other factors considered above and the pertinent rules laid down in the statute books and jurisprudence for guidance.

Although the applicant has not demonstrated nor expressly stated that he has tried to fulfil and or failed to satisfy the above conditions, it can be gathered from the submissions and the time spent on remand since his admission to bail that he is facing some impediments to regain his liberty. It is only just and fair that the said conditions be revised to his advantage.

In light of the foregoing and the value of the subject matter as reflected in the charge sheet, it is hereby ordered that a sum of 160, 000/- USD be deposited instead of the USD 260, 000.00 earlier imposed. The other conditions still stand.

D. GASWAGA

JUDGE

Dated this 19th day of November, 2007.