

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

MAXIME PHILOE

VITAL PHILOE

Criminal Side No. 89 of 2008

Mr. Govinden for the Republic

Mr. Derjacques for the Accused

RULING

Gaswaga, J

Having considered the application for bail and reply or objection thereto by the prosecution the following observations were made; that the charge herein is one of murder – the most serious offence in our jurisdiction and as such, as a matter of practice, bail is not or rarely granted; and A1 is the father of the deceased while A2, aged 18 years the brother to the deceased. A1 relied on medical grounds which were not even substantiated. It was however submitted for A2 that he was an eye witness who should therefore not have been arraigned. Contrary to this submission the prosecution contends that A2 is of age and given the strong evidence on the file he has been properly charged. That he ought to have considered his status as a student before indulging in the criminal activities culminating in this case.

The Court notes that the alleged offence being very serious the accused will know that, if convicted, they are likely to receive a severe sentence (life imprisonment) and will therefore be tempted to abscond rather than run the risk of such a sentence. Against this background also is the constitutional right to an accused being treated as innocent until proved guilty. As argued by Mr. Derjacques, if it turns out that the accused are acquitted after staying in custody for sometime, A2, a young man of 18 years who is starting his A-Level examinations tomorrow will have lost his future. He may lose a chance to go to university and be an asset to this country in future. This is not the intention of the court. Our duty is to administer justice to all irrespective of one age, relationship with the victim, wishes of the family members, status (e.g student) etc. I had opportunity to consider the contents of the affidavit on record.

Bearing in mind the foregoing and circumstances in this case together with the authorities referred to especially that of R vs. Sydonie (manslaughter) which is almost similar but not on all factors with the one at hand, I shall reluctantly release A2 on bail, one of the reasons being to allow him to write his examinations due tomorrow. A1's application fails and he is further remanded for 14 days.

A2 shall first fulfill the following conditions:

1. Presentation of documentation from the Ministry of Education or the Director of the School of 'A' Level Studies (SALS) confirming his participation in the imminent A-Level Cambridge examination.
2. The accused should enter a bail bond in the sum of Rs. 40, 000/- (NOT CASH) with two substantial sureties in the like sum who are to be approved by the

Court.

3. The accused should not interfere with the witnesses or the course of justice in this case in any way or get involved in any criminal activity.
4. The accused should surrender his passport or any travel document issued to him to the Registrar of the Supreme Court before the release order is signed and should not leave the jurisdiction of Seychelles without an order of this Court.
5. The accused should report to the nearest police station being the Anse Etoile Police Station every Monday, Wednesday and Friday between 7:00am and 9:00am.
6. If any of these conditions are breached this order for bail will be revoked and the accused will be remanded in custody unless a plausible explanation is offered.

The Registrar is to convey this order to the Director of Immigration and the Commissioner of Police.

D. GASWAGA

JUDGE

Dated this 11th day of November, 2008.