# IN THE SUPREME COURT OF SEYCHELLES

**STEVEN ROSE** **Appellant**

**VS.**

**THE REPUBLIC** **Respondent**

Criminal Appeal Side No. 23 of 2006

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Mr. Renaud for the Appellant

## RULING

***Gaswaga J***

This is an application for bail pending appeal. Although the respondent (Republic) was duly served and therefore aware of the date and time of the hearing of this application, no appearance was put up and the matter proceeded *ex parte*. The usual circumstances as considered by court are:

(a) Where the chances of success of the appeal are so great that the probability that the appeal will be allowed is overwhelming, and

If the appeal were successful the sentence, or the greater portion of it, would already have been served.

As one delves into 'the success of the appeal' caution must be taken not to discuss and determine the merits of the appeal at this stage of bail application. The accused, now applicant, was convicted on his own plea of guilty and sentenced by

the Magistrates Court at Victoria (His Worship Charles Magesa) on the 16/10/2008 for entering dwelling house with intent to commit a felony therein contrary to and punishable under section 290 of the PCA as amended by Act 16 of 1995, on count one, and stealing from dwelling house contrary to section 260 as read with section 264 (b) of the PCA on count two.

A notice and grounds of appeal dated 17/10/2008 have been duly filed before this court on the 20/10/2008.The reasons advanced for the release on bail are clearly laid out in paragraph 8 (i) to (iii) of another application also dated 17/10/2008. They are:

(i) *The reason for the application is that the learned Magistrate faced with a naïve 22 year old first offender should have explained to the accused that he had a right to be defended by an Attorney system or on his own payment before accepting his plea of guilty, reminding himself that conviction is based on evidence.*

*The property subject to the charges which the convict faced have all been recovered.*
*The applicant has no previous conviction.*

Having perused the record from the court below I am unable to agree with Mr. Renaud on ground (i) as advanced. The learned Magistrate who in very clear terms adequately and reasonably explained to the appellant his constitutional rights cannot be faulted on this. Although he went a head to announce the relevant mandatory punishment (5 years imprisonment) in my view that was not mandatory. **See <u>Vincent Rose Vs Rep. SC Crim. Appeal No. 21 of 1999</u>**. To this end the record reads:

***Court:*** *Let the accused be informed his constitutional rights "Creole"*
***Accused:*** *I will defend on my own.*
***Court:*** *Accused informed in respect of first count that it comprises mandatory sentence of five years.*

***Accused**: It is OK. I know understand.*

***Court:** Charge read over and explained to the accused person in Creole.*

At the hearing Mr. Renaud advanced and argued different grounds thereby abandoning his pleadings. I am left to wonder why those grounds were not included in the affidavit. In any event the argument that the appellant was asked by the police to plead guilty is not convincing. The sweeping allegation against the police is not supported by any evidence, it only emerges during submissions. Even the Court of Appeal authority of **Paul Oredy Vs. Rep**. cited is not applicable. In the end, I do not find any reasons to convince me that the chances of success are overwhelming.

Further, the recovery of stolen property in a crime has no effect on a conviction properly entered by a court. It would probably be considered during mitigation and sentencing, which stages have already been covered by the trial court.

With regard to being a first offender, the Court of Appeal held that *having a clear record does not alone amount to a "special reason"* for enlargement on bail. (**Naddy Sinon Vs Rep. No.4 of 2006**.) However, the same court cited **Sauzier,J** in **R Vs. Joubert**, when he stated the principle that *" a clear record and the shortness of sentence considered both together do constitute special reasons"*

It will be recalled that interestingly in the instant case the appellant's counsel did not address me on sentence. Even if the appeal were to succeed the appellant would not have served the full term of five years or the greater portion of it by the time the appeal is disposed of. For these reasons I find that the application is not meritorious and I refuse to grant it.

**D. GASWAGA**

**JUDGE**

Dated this 9th day of February, 2009.