

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

**VS.
ROY BEEHARRY**

Criminal Side No. 44 of 2008

Mr. Durup standing in for
Mr. Govinden, the Attorney General for the Republic
Mr. Pardiwalla for the Accused

ORDER

M. N. Burhan, J

I have considered the application for bail made by learned counsel for the accused. It is to be noted that learned counsel has sought to make an application for bail, not before the learned trial judge but during the court vacation when he was on leave, even after it was brought to his notice, that the learned trial judge was due to return shortly. However even though the learned trial judge has now returned, learned counsel still insists that a ruling be made by this court. Hence at the insistence of learned counsel, the following order is made.

It is clear that the right of the accused to bail at the time he was produced in court, has already been considered by court and the accused remanded under the permitted derogations

contained in Article 18 (7) of the Constitution of the Republic of Seychelles. Further more the accused cannot seek to complain in respect of the trial being delayed, as trial against the accused has been concluded. Although learned counsel has submitted on the delay in the filing of proceedings, it is to be noted that the typed proceedings have been completed and filed in the record. It is now the duty of counsel to bring it to the notice of the trial judge and not another judge, if there is any matter he wishes to expedite. It is for this reason that court on the last occasion advised counsel that it would be best to make any application including that of bail, before the learned trial judge.

With regard to the submissions made by learned counsel on the seriousness of the offence and that it is not a “stand alone” provision, based on the Court of Appeal judgment in the ***Roy Beehary v The Republic SCA No 11/09***, it is to be noted, that paragraph 39 of the said judgment specifically refers to “The Special Case of Trafficking in Drugs”. It is therefore apparent that by categorising the offence of trafficking in controlled drug as a “special case” at paragraph 39 of the said judgment, a different approach to bail was envisaged to that mentioned in the preceding paragraphs of the said judgment. His Lordships, the Honourable Justices of the Court of Appeal, deemed it fit to deal with the offence of trafficking in drugs, due to its seriousness, as a “special case as many of the “germane factors” mentioned in the preceding paragraph 38 of the

judgment could be inferred due, to the seriousness of the offence concerned.

The controlled drug in this instant case, is a quantity of 201.6 grams of Cannabis Resin and the quantity concerned is large enough to attract the rebuttable presumption of trafficking. The seriousness of the offence could be clearly inferred, when one considers the charge and the facts mentioned in the particulars of offence. Furthermore this is not the opportune moment to grant bail to the accused, as trial against the accused is concluded and the accused will be well aware of the strength of the case against him and the likelihood of him absconding will be greater than before, considering the fact that if he is found guilty, he would face a minimum mandatory jail term of 8 years or more.

If learned counsel feels otherwise and that the case against the accused is weak, he should bring it to the notice of the learned trial judge who will be better acquainted with the facts of the case. Hence it cannot be said that the seriousness of the offence is a "stand alone" provision in this instant case as claimed by learned counsel, as there is a strong possibility of the accused absconding at this stage of the case, if granted bail.

For the aforementioned reasons taking all the relevant circumstances into account, this court is of the opinion that this is not an opportune moment to grant bail, considering

the fact that the trial is concluded, the proceedings ready and that judgment is forthcoming in the near future. Therefore the application for bail made by learned counsel is declined.

M. N. BURHAN

JUDGE

Dated this 7th day of September, 2009.