

IN THE SUPREME COURT OF SEYCHELLES

THE REPUBLIC

VS.

PATRICK EULENTIN

Criminal Side No. 9 of 2009

Mr. Durup for the Republic

Mr. Gabriel standing in for

Mrs. Armesbury for the Accused

ORDER

Burhan, J

When this case was mentioned on the 22nd of May 2009 Learned counsel for the accused made an application for bail and in support of her application filed an affidavit sworn by the accused in this case. The main grounds urged by learned counsel were;

- a) The accused had a right to be released either unconditionally or upon reasonable conditions for appearance under Article 18 (7) of the Constitution of the Republic of Seychelles.
- b) That the only reason for remand urged by the prosecution as stated in the affidavit filed is the “seriousness of the offence” which in the light of the case of ***Roy Beehary v The Republic SCA No 11/09*** is not a stand alone provision.
- c) The prosecution has failed to place “factual matters germane to the issue” before court in order for the court to “carry out a proper

scrutiny of the objection to bail” but has relied on a recital of seriousness of the offence and the penalty.

There is no doubt that when an accused is produced in court in the first instance after arrest his right to be released either conditionally or

unconditionally under Article 18 (7) of the Constitution exists, except where

(emphasis added) the permitted derogations or limitations contained in Article 18 (7) (a) (b) (c) (d) (e) and (f) exist.

In this instant case the prosecution is seeking a remand in accordance with section 179 of the Criminal Procedure Code read with Article 18 (7) (b) of the Constitution, i.e the seriousness of the offence committed. The burden rests on the prosecution to satisfy court of the need to remand the accused.

When one considers the recent judgement of **Roy Beehary v The Republic** referred to above, it is to be noted that no reference has been made to the provisions contained in the Criminal Procedure Code in respect of bail. In the case of **R v Nitin Krishna Redekar Criminal Side No 21 of 2007** it was held by Perera J (as he was then), that Article 18 (7) of the Constitution was not an enabling provision for the prosecution to seek a remand but that the motion filed under Section 179 of the Criminal Procedure Code in this respect was competent.

Be that as it may, when one considers the judgement in the **Roy Beehary v The Republic**, it is clear that paragraphs 36, 37, and 38 of the said judgement sets out the “Procedure and judicial determination of seriousness of the offence”. It mentions that courts should examine the particulars of the offence (emphasis added) to ascertain whether the offence is serious despite the charge, as the statutory charge may be “high sounding”, but the particulars thereof may just be ordinary and further states that the seriousness of the offence should

be under careful judicial scrutiny, with all the circumstances of the case taken in its proper context. It also sets out thereafter the “factors germane to the seriousness of the offence” namely;

- a) Whether the defendant would interfere with the witnesses to render the trial a farce,
- b) Whether for his own protection he should be remanded,
- c) Whether he has breached a condition of bail,
- d) Whether there is a likelihood that he would commit another offence
if released,
- e) Whether his rights as a defendant should not prejudice the rights of
others and the public interest.

However it is to be noted, that paragraph 39 of the said judgement specifically refers to “The Special Case of Trafficking in Dangerous Drugs”.

It is therefore apparent that the Honourable Justices of the Court of Appeal have decided in their wisdom to deal with the offence of “trafficking in controlled drug” separately in paragraph 39 as a “special case”.

The opening lines of the said paragraph state;

“In the case of trafficking in controlled drugs, there may not be any quarrel about the seriousness of the offence. The legislature has already categorized it as one, providing for it a minimum mandatory sentence of eight years”.

Paragraph 40 states “A court may well take the view that all the circumstances taken into account especially the seriousness of the offence release of the defendant is not the option”.

It is therefore apparent that in categorising the offence of trafficking in controlled drugs separately as a special case envisages a different, stricter and somewhat narrower

approach to bail in respect of such an offence.

In this instant case the accused has been charged for trafficking in controlled drug. On perusal of the particulars of the offence the drug concerned is heroin a class A drug. The quantity is 138.4 grams, well in excess of the minimum quantity of 2 grams, which attracts the rebuttable presumption of trafficking. It cannot be said that in this instant case the charge is "high sounding" but the particulars thereof are ordinary.

For the aforementioned reasons, taking all the relevant circumstances into account, this court declines the application made in respect of bail.

M.N BURHAN

JUDGE

Dated 27th day of May 2009