

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 37/2014**

**[2014] SCSC**

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**THE REPUBLIC**

versus

**DIRK STEPHEN ROSE FABIEN ROSE**

Accused

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Heard: 8 August 2014

Counsel: Mr David Esparon, Principal State Counsel for the Republic  
Mr Basil Hoareu for the accused

Delivered: 21 August 2014

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**RULING**

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Akiiki-Kiiza J

**[1]** This is an application by way of a notice of motion by Mr David Esparon, Principal State Attorney representing the learned Attorney General seeking the remand of the respondent/accused person, Mr Dirk Stephen Fabien Rose. This motion is taken out under the provision of Section 179 of Criminal Procedure Code read together with Article 18(7) of the Seychelles Constitution. The application is supported by the affidavit sworn and deponed by Assistant Superintendent Jeffrey Jean Baptiste of the Seychelles Police

Force dated the 8<sup>th</sup> day of August 2014. The affidavit contains the background of the alleged commission of the offence and the grounds for this application.

[2] The accused/respondent faces the charge of murder contrary to section 193 of the Penal Code Act and punishable under Section 194 of the same Act. The particulars whereof are that, Dirk Stephen Fabien Rose, the accused person, on the 26<sup>th</sup> day of July 2014, at Roche Caiman, Mahe, murdered one Erickson Jules.

[3] The grounds of the application as presented by the applicant are contained in paragraph 15 of Mr Jeffrey Jean Baptiste's affidavit, referred to above. For convenience I will set out the relevant paragraphs of the affidavit as follows:-

[4] " That the reasons why the respondent Dirk Stephen Fabien Rose should be remanded in custody are due to the following:-

(1) The respondent has been charged with the offence of murder.

(2) That the offence charged is a serious offence since the offence of murder carries a maximum mandatory sentence of life imprisonment in the event of conviction.

(3) That the offence is serious since it is alleged that it was a hit and run.

(4) That there are reasonable grounds to believe that if the suspect is released on bail, he will not appear for his trial and will abscond since the suspect did not stop his vehicle after hitting the police officer Erickson Jules and that thereafter, he concealed the vehicle under some leaves and he had also removed and hidden the vehicle's registration number plate S21103 which was on the vehicle that was allegedly used to commit the offence.

(5) That such offences are on the rise in the Republic of Seychelles.

[5] At the hearing of the application, Mr. Esparon appeared for the Applicant/Republic and Mr Hoareau represented the Respondent/accused person. Under Article 19(2) (a) of the Seychelles Constitution, the accused person is presumed innocent until he is proved guilty through a trial or he has pleaded guilty. Under Article 18(7) of the same Constitution a person 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 circumstances determines otherwise:-

(a) *Where the Court is a Magistrate Court, the offence is of treason or murder;*

(b) *The seriousness of the offence;*

(c) *There are substantial grounds for believing that the suspect will fail to appear for the trial or will interfere with the witnesses or will otherwise obstruct the course of justice or will commit an offence while on release;*

(d) *Where there is a necessity to keep the suspect's protection or where the suspect is a minor, for the minor's own welfare;*

(e) *The suspect is serving a custodial sentence;*

(f) *The suspect has been arrested pursuant to a previous breach of the conditions of release for the same offence.*

[6] As for Article 18(7) (1)(a), the sub Article talks of a Magistrate's Court. However, this is the Supreme Court hence the mere fact that the charge is treason or murder does not, in my view necessarily deter or bar this Court to release such a person charged with an offence of murder on bail, in appropriate circumstances. Secondly following the latest case from the Court of Appeal i.e **KENNETH STEVE ESPARON AND OTHERS VS THE REPUBLIC SEYCHELLES COURT OF APPEAL CASE NO. 1,2,3/2014**, murder or treason areailable offences. That:-

Their Lordship's while discussing the applicability of Article 18(7) of the Constitution, stated, *inter alia*\_(in paragraph 20).

**“Article 18(7) provides for the exceptions but the court should be satisfied that those exceptions exist. They are only circumstances which will assist the Court in determining whether the person should be kept in custody. It may still find that the person needs to be released albeit that he is charged for treason or murder...that the offence is serious, etc. The reason the Court will do that is because the *prima facie***

**evidence against the accused may be so weak.”** (Usually the *prima facie* evidence is from the affidavit in support of the notice of motion to keep the accused on remand”).

[7] Having found that this Court can entertain bail in treason and murder cases it is clear that Article 18(7) (a) is not necessary a bar to release the accused on bail. This leaves the ground raised by the Applicant. In respect of Article 18(7) (b) and Article 18 (7) (c). That of seriousness of the offence, and the alleged likelihood of the accused not to answer his bail. This appears to be the spirit behind paragraph 15 of the affidavit in support of the application to remand the accused person.

[8] It is now settled since the court of appeal decision in **FRANCIS BARREAU VS THE REPUBLIC CRIMINAL SEYCHELLES COURT OF APPEAL CASE NO. 7/2011** that “ **seriousness of the offence is a determination the Court will have to make , taking into consideration the maximum penalty the Legislature has decided to impose for its commission, the likelihood of the maximum sentence being imposed, whether the sentence is mandatory or not, the manner the offence has been committed, the impact the commission of such offence has on society and economy, the age of the offender and whether the offender has a propensity for commission of offences similar to the one before the Court. It is a consideration of all these factors that makes an offence serious or not.”**

[9] According to Mr Hoareau, whatever, the prosecution has brought forward is only allegations and that they will be disputed at the trial and that his client had reported to the police within about 2 hours from the time of the accident and has no plans to abscond from justice, that he could released on terms deemed fit and proper by this Court.

[10] As already seen herein above the accused is on a charge of Murder contrary to section 193 of the Penal Code Act. The maximum sentence for murder is a mandatory life imprisonment. The word “shall” is used in section 19(4)of the Penal Code Act. According to averments of Mr Jeffrey Jean Baptiste in his affidavit sworn in support of this application, it is alleged that this was a hit and run accident, where the accused had seen the deceased in uniform stopping him, that he had slowed down but then decided to suddenly accelerate thereby knocking the deceased police officer down, and fleeing from the scene.

[11] As to the likelihood of the maximum sentence being imposed, given the fact that someone lost his life, and if murder is proved beyond reasonable doubt, this Court is likely to impose the mandatory maximum sentence.

[12] As to effect on the society and on the economy, the victim was a police officer in charge of enforcing the Laws of this country so as to ensure Law and Order prevails, which is a bedrock for economic stability leading to a sustained economic growth of the country. By killing police officers it would grossly undermine such a prospect.

[13] In consideration of all of the above, I find that the prosecution has established a *prima facie* case warranting to keep the accused person in custody.

[14] In any case, it is the first time the matter has come to Court. However, as pointed out by the Court of Appeal in the **KENNETH STEVE ESPARON** case cited above, that:-

*“The Judge may in good reason grant bail on being satisfied that the case is taking too long; the defendant is one that will not abscond; the facts are too tenuous (have little substance or are weak) against him and for many other reasons such as there have been a change of circumstances since the decision to deny him bail.”*

If the above happens as the case proceeds, then this Court can reconsider keeping the accused on remand. All in all I find that the prosecution has made up a *prima facie* case to keep the accused on remand. He will be produced every two weeks in this Court till further orders to the Contrary.

[15] Order accordingly.

Signed, dated and delivered at Ile du Port on 21 August 2014

D Akiiki-Kiiza  
**Judge of the Supreme Court**