

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CO 39/2014**

**[20114] SCSC**

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**THE REPUBLIC**

versus

**PATRICK TAMBOO**

Accused

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Heard: 17 October 201  
Counsel: Mr Ananth Subramanian, Attorney General for the Republic  
Mrs Amesbury for the accused  
Delivered: 28 October 2014

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**RULING**

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Akiiki-Kiiza J

**[1]** The accused in this case was remanded in custody upon the application of the prosecution on the 22<sup>nd</sup> August 2014. He has been appearing in Court every 14 days. His case is fixed hearing in June 2015. This is due to the busy schedule of his counsel. It is now about 2 months since the order to remand him was made by this Court. His learned counsel has now moved the Court to release her client on bail basically on the following grounds.

- (i) *That in other cases of similar nature, the accused person had been released on bail.*
- (ii) *That the case has been fixed for hearing in June 2015, hence there is likely to be a delay in finalising it.*
- (iii) *That the Court has to consider what is provided for in Article 18 (7) of the Constitution but not to consider what the Court has come to term in “changing circumstances” and that it is the prosecution which has to show that the circumstances have not changed but not the accused person.*

[2] On the other hand the learned Counsel came for the Republic, Mrs Lansinglu maintained that, the reasons advanced by the prosecution 2 months earlier are still the same and have not changed. Hence, the accused should be kept on remand.

[3] It is to be noted that the right to be released on bail at the pre-trial stage, is under Article 18 (7) of the Constitution and once a person has been charged, the law to be considered in Section 179 and 195 of the Criminal Procedure Code. However in both instances it must be emphasized that the right to bail is a qualified right to be determined judiciously by the Courts. Once a charge has been laid against an accused person, it is the duty of the Court to ensure that he is afforded a fair hearing within reasonable time. (See Article 19 (1) of the Constitution.)

[4] The reasons given to this Court 2 months ago by the prosecution for remanding the accused person, and which the Court agreed with, are as follows:-

- (i) *That the offence charged against the respondent herein are of serious nature; that the offence of trafficking in a Controlled Drug namely cannabis Resin having a total weight of 43.3 grams which carries a minimum mandatory sentence of 16 years imprisonment and a maximum of 50 years imprisonment and a fine of SR 500,000/- if convicted.*
- (ii) *That the offence of assaulting NDEA agents and obstructing the NDEA agents while performing their duties charged against the respondent herein, also carries*

*a minimum mandatory sentence of 20 years imprisonment and a fine of SR 5,000,000 upon conviction.*

- (iii) That the amount of drug, namely cannabis Resin which was recovered from the respondent had a weight of 43.3 grams which is above the prescribed statutory limit and give raise to a rebuttable presumption of having possessed the said Controlled drugs for purposes of trafficking.*
- (iv) That the drugs offences are on the rise in the country and endangering the peace, public order and morality especially of the young generation.*
- (v) “That there are substantial grounds to believe that if the accused is release on bail and not remanded he is likely to abscond thus obstructing the course of justice, as on the day of his arrest, the accused, assaulted and obstructed the NDEA agents and tried to escape from the scene so as to evade arrest, and resisted arrest, and attempted to dispose of the exhibit.”*

**[5]** The Court after reviewing the evidence before it, from the affidavit deponed in support of the motion and after consideration of both statutory and case law, it remanded the accused person in custody till further notice, but would be produced every 14 days as per Section 179 of the Criminal Procedure Code.

**[6]** Mrs Amesbury the learned counsel for the accused was of a view that the Court should not coin the term “changing circumstances” while revising the application to release the accused on bail as such phrase is not any where in the Constitution or in the Criminal Procedure Code. However, with due respect to the learned counsel, Courts from time to time elaborate on a given statutory law as to how it operates. From a careful perusal of the authorities, both by the Supreme Court and the Court of Appeal the phrase “changing circumstances” has been repeatedly used whereby the Court can base itself to review its earlier decisions refusing a grant of bail to an accused person.

- [7] In the case of **REPUBLIC VS ROSELINE & ORS [1987] S.L.R 1** the Court held that  
*“ when circumstances under which an accused were remanded has not changed it was justified to extend the remand”*.
- [8] The Court was considering whether to release an accused after initial refusal to grant him bail and had remanded him.
- [9] In the case of **R VS SLOUGH JUSTICES, EX PARTE DUNCAN [1982] CRIMINAL APPEAL REPORTS 384** the Court in England held that,  
*“The Court should not hear arguments as to the facts or law which it has previously heard **UNLESS** there has been such a change in the circumstances as might have affected the earlier decision”*. (emphasis mine)
- [10] In the case of **KENNETH STEV ESPARON VS THE REPUBLIC SCA NO. 1/2014**, the Court of appeal reviewed the law on bail, and held inter alia, in paragraph 47, that; while the Court, is reviewing refusal to bail, it should consider among other things, whether there has been a change of circumstances since the decision to deny him bail. There are many other authorities of this court to the effect. Hence, it is my considered view that it is now settled that a change of circumstances is part and parcel of our law while reapplying for bail before the same court which had earlier refuse to grant it.
- [11] In the instant case, has any change of circumstances happened since this court remanded the accused 2 months ago? The case has already been fixed for hearing in June 2015. This seemingly far off date has been necessitated because the learned counsel for the accused could not get any earlier date than June 2015 due to her busy schedule.
- [12] In the premises therefore, there has been no change in the original reasons advanced by the prosecution while seeking the remand of the accused in prison 2 months ago.

**[13]** All in all the accused will remain on remand, but be produced every 14 days before this Court. Of course he has a right to reapply if and when circumstances change from those advanced when he was first remanded.

Order accordingly.

Signed, dated and delivered at Ile du Port on 28 october 2014.

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