

**IN THE SUPREME COURT OF SEYCHELLES**

**CRIMINAL SIDE: CO 2/2013**

**[2015]SCSC 102**

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**ROY PATRICK BRIOCHE**

First Accused

**ROBERT BILLY JEAN**

Second Accused

**DANNY DERECK BRESSON**

Third Accused

**FRANKY CLEMENT THELERMONT**

Fourth Accused

**NADDY PETER DELORIE**

Fifth Accused

**GEORGE MICHEL**

Sixth Accused

**STEVE ESPARON**

Seventh Accused

Versus

**THE REPUBLIC**

Respondent

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Filed: 17<sup>th</sup> March 2015 & 27<sup>th</sup> March 2015

Heard: 2<sup>nd</sup> April 2015

Counsel: Mr. Joel Camille appearing for 1<sup>st</sup> Accused  
Mr. Clifford Andre appearing for 2<sup>nd</sup> Accused  
Mr. Melchior Vidot appearing for 3<sup>rd</sup> Accused and standing in for  
Mrs. Alexia Amesbury appearing for 4<sup>th</sup> and 5<sup>th</sup> Accused

Mr. David Esparon Principal State Counsel appearing together with Mr.  
Hemanth Kumar for Republic

All 5 accused - produced

6<sup>th</sup> and 7<sup>th</sup> accused - on bail

Delivered: 6<sup>th</sup> April 2015

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## RULING

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### **Robinson J**

- [1] This court refused bail, on the 28<sup>th</sup> November, 2014, stating that the situation has not changed since the last remand in custody. Two applications, for bail, are now before this court. One application filed, on behalf of the 1<sup>st</sup> accused, on the 17<sup>th</sup> March, 2015. The other application filed, on behalf of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused, on the 27<sup>th</sup> March, 2015.
- [2] The Republic opposed the applications. Agent Johnny Malvina, attached to the National Drugs Enforcement Agency, has sworn to affidavits, dated the 25<sup>th</sup> March, 2015, and 1<sup>st</sup> April, 2015, with respect to the applications dated 17<sup>th</sup> March, 2015, and 27<sup>th</sup> March, 2015, respectively.
- [3] This court heard the two applications together and is now delivering one Ruling with respect to them.
- [4] Mr Joel Camille stated that the "*medical condition*" of the 1<sup>st</sup> accused is such that he should be released on bail. Learned counsel for the 1<sup>st</sup> accused relied on the medical reports exhibited as P1, P2, P3, and P4 and the testimony of Dr Jhowla Manoo of the orthopaedic Unit of the Health Care Agency, Specialised Care Directorate, Mont Flueri.
- [5] The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused complained about the delay in the disposition of this case. The 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused stated that the delay is now attributable to the absence of Mrs Alexia Amesbury, learned counsel for the 4<sup>th</sup> and 5<sup>th</sup> accused, from the jurisdiction during the time fixed for the hearing of this case and the "*medical*

*condition*" of the 1<sup>st</sup> accused. Further, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused denied that they will abscond and expressed their willingness to comply with strict bail conditions.

[6] The Republic objected to the release on bail of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused, even on stringent conditions, on the grounds that they are likely to fail to come to court as and when required and interfere with witnesses likely to give evidence against them. With respect to the 1<sup>st</sup> accused, learned counsel for the Republic stated that the Prison Authority is looking after him reasonably well. Learned counsel for the Republic added that the 1<sup>st</sup> accused is being kept in the infirmary, where he is receiving the appropriate medical care. The 1<sup>st</sup> accused confirmed on oath that he is being kept in the infirmary, but claimed that he does not see anyone, except at lunch time and dinner time. He testified about the area where he is being kept, in the infirmary, being dirty and claimed that he has to clean that area. I note that the 1<sup>st</sup> accused did not complain about his "*medical condition*" on oath. I also note that no questions were put to him about his "*medical condition*" or recovery by learned counsel, Mr. Joel Camille.

[7] This court has considered the applications in conjunction with the facts placed before this court in the previous bail applications. I start with the objection, namely whether the applicants will stand their trial or put, otherwise, whether there is a real likelihood that they will abscond if bail is granted. The opinion of this court is that due weight should be given to such a risk especially bearing in mind that Seychelles is surrounded by water and it is very easy to leave the islands by sea.

[8] *Material change of circumstance*

[9] The Seychelles Court of Appeal in SCA No: 1 of 2014 *Esparon v The Republic* at para [61], of the judgment, stated that the release of the accused persons "*will only be possible, on the most stringent conditions and if the trial which is set for September 2014 fails to take off, through no fault of their own.*".

[10] This hearing of this case did not take off on the 16<sup>th</sup> March, 2015. The remaining dates are 4<sup>th</sup> May, 2015 through 29<sup>th</sup> May, 2015, 15<sup>th</sup> June, 2015 through 30<sup>th</sup> June, 2015.

[11] It is true that the hearing of this case did not take place through no fault of the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused, but I state that Mrs Alexia Amesbury, learned counsel for the 4<sup>th</sup> and 5<sup>th</sup> accused, could not appear, on those dates, for good cause. With respect to the 1<sup>st</sup> accused, I refer to the report of Dr Jhowla Manoo that states the following –

"History

The above named patient was seen on 19.03.2015 in accident and emergency unit Seychelles hospital. He was complaining of pain left knee with inability to weight bear on the same knee unless he uses crutches. He was unable to fully bend the knee. He has a metal plate removed from the distal end of his femur a few months ago.

Examination

General condition of the patient was good. He was limping even with the help of crutches.

Left knee was not swollen, but tender on movement.

[...]. Ligaments were okay.

[...].

Impression

Patient has residual stiffness of left knee which will require physiotherapy. Not much problem is anticipated from the healed fracture and the metals which are still inside since the metals are implanted firmly in the bone."

Dr. Jhowla Manoo reiterated on oath that the left knee of the 1<sup>st</sup> accused will require physiotherapy. I made order, on the same day, in accordance with the "*impression*" of Dr Jhowla Manoo. I made order, subject to further order of this court. The order of this court, dated the 2<sup>nd</sup> April, 2015, is incorporated in this Ruling. In light of the above, this court states that the fact that the hearing of this case did not take off, on the 16<sup>th</sup> March, 2015, because of the predicament of Mrs. Alexia Amesbury and the "*medical condition*" of the 1<sup>st</sup> accused, do not amount to any material change of circumstance.

[12] The final step for determination is whether faced with the risk of absconding, the imposition of conditions is likely to reduce the risk. I bear in mind that the liberty of the applicants is the rule and their detention the exception and that bail should not be denied as a form of punishment. This court after having carried out such a balancing exercise is satisfied that the risks identified will not be curtailed by the impositions of the most stringent conditions.

[13] In sum, this court is not prepared to exercise its discretion to grant bail to the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused.

*Further orders*

[14] I make order that the Superintendent of Prison report to this court on Friday 10<sup>th</sup> April, 2015, at 1:45 pm, about steps, which are being taken by the Prison Authority to ensure that the 1<sup>st</sup> accused follows physiotherapy as stated by Dr Jhowla Manoo.

[15] I remand the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused to Montagne Posee Prison until the 8<sup>th</sup> April, 2015. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> accused shall be produced before the Seychelles Court of Appeal on the said date at 9:00 am.

I so order.

Signed, dated and delivered at Ile Du Port this 6<sup>th</sup> April, 2015.

Fiona Robinson  
**Judge of the Supreme Court**