

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 39/2015

[2015] SCSC 199

THE REPUBLIC

versus

DANIEL MONTHY

DINO MONTHY

RONNY APPASAMY

SAVIO HOAREAU

JOEL SERVINA

Accused

Heard: 25 June 2015

Counsel: Mr. Andy Asba, State Counsel for the Republic
Mrs Amesbury with Mr. Vidot for the 1st 3rd and 4th accused Mr. Gabriel
for the 2nd accused and Mr. Andre for the 5th accused.

Delivered: 26 June 2015

ORDER

Burhan J

- [1] I have considered the submissions made by learned counsel for prosecution seeking the remand into custody of all the accused and the objections of learned counsel for the accused in respect of same.
- [2] The 1st 2nd and 3rd accused have been charged with threatening violence with common intention to one Alex Monthly contrary to section 89(a) read with section 23 of the Penal Code and punishable under section 89(a) of the said Code. The 3rd accused has also been charged for threatening violence contrary to and punishable under section 89(a) of the Penal Code on police officers Stephen Evenor and Lisa Azemia. The 1st and 2nd accused have in addition been charged with damage to property contrary to and punishable under section 325(1) of the Penal Code being the property of the Seychelles Government. All five accused have also been charged with disorderly conduct in a police building contrary to and punishable under section 61(1) of the Police Force Act, Cap 172.
- [3] Learned counsel for the prosecution has moved court that all the accused be remanded based on the facts contained in the affidavit filed by Inspector Jeffrey Antoine and the charges framed against the accused.
- [4] It is the contention of all learned counsel for the accused that the accused should be released on bail as the offences are not of a serious nature and are misdemeanours and none of the circumstances mentioned fall within the permitted derogations as contained in article 18 (7) of the Constitution.
- [5] Already the 4th and 5th accused in this case have been granted bail by court as the only charge levelled against both these accused was disorderly conduct in a police building.
- [6] Learned counsel for the accused has also intimated to court that according to the Schedule of the Courts Act the offences are triable in the Magistrates' Court. It is apparent she was referring to the third schedule of the Criminal Procedure Code. Learned State Counsel for the prosecution submitted that the aggravating circumstances in this case, has resulted in the decision that the case be filed before the Supreme Court. Be that as it may, it cannot be said that the Supreme Court is precluded from hearing this case as in terms of article 125 (1) (b) of the Constitution of the Republic of Seychelles and

Courts Act Cap 52 (subsidiary legislation paragraph 9), the Supreme Court has full original jurisdiction to hear all prosecutions for offences of whatever nature in exercising its criminal jurisdiction and impose any sentence prescribed by law.

- [7] It is apparent learned counsel for the prosecution relies on the aggravating circumstances mentioned in the affidavit of Inspector Jeffrey Antoine which states that while one Alex Monthy had been in the Anse Boileau police station requesting the examination of his vehicle a pick up, the five accused in this case had entered the police station armed with machetes and knives. The 1st 2nd and 3rd accused had thereafter tried to fight with Alex Monthy. The 2nd accused had attempted to stab the said Alex Monthy with a knife but was prevented by the intervention of Corporal Evenor. The affidavit further states that as Cpl Evenor had attempted to get assistance using his phone, the 1st Accused had taken the phone from him and thrown it at Alex Monthy. The 2nd accused had left the station and come back with an axe but once again Cpl Evenor had managed to stop him injuring Alex Monthy. WPC Azemia had also attempted to prevent the 1st 2nd and 3rd accused from fighting with Alex Monthy but had been threatened with a penknife by the 3rd accused.
- [8] It is apparent that all these acts of threat and violence with deadly weapons had occurred within the precincts of the police station showing scant respect to an institution concerned in the maintaining of law and order which is in the view of this court a serious aggravating factor. It is apparent from the facts before court that the consequences would have been of a much more serious nature, if not for the timely intervention of the police officers present who themselves had been subject to threat and rough handling by the 1st 2nd and 3rd accused.
- [9] At present considering the charges framed against the accused, the principal witness against the 1st 2nd and 3rd accused is Mr. Alex Monthy. Considering the nature of the attack and threats on Mr. Alex Monthy, aggravated by the fact such attack occurred inside a police station which is usually considered as a safe place where victims and witnesses seek protection, it is the view of this court, substantial grounds exist before this court to believe that if the 1st 2nd and 3rd accused are released on bail, they would interfere with the principal witness in this case Alex Monthy and even attempt to obstruct the course of justice.

[10] Article 18 (7) (c) of the Constitution of the Republic of Seychelles reads as follows:

A person who is produced before a court shall be released, either unconditionally or upon reasonable condition 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

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(a) –

(b) -

(c) *There are substantial ground 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*

[11] It is the considered view of this court that this article, unlike article 18 (7) (b) is a stand alone provision and does not depend on the seriousness of the offence. It is the view of this court that even if an offence is a misdemeanour, if the court is satisfied or believes that substantial grounds exist that the suspect or accused will fail to appear at the trial or interfere with the witnesses or will otherwise obstruct the course of justice, the court could proceed to remand the accused into custody.

[12] Learned counsel for the accused has also brought to the notice of court that in a previous instance the Hon Attorney General had not charged a person who had committed an offence of a similar nature. The circumstances that are relevant at present are the circumstances in this instant case before court which indicate, steps have been taken by the Hon Attorney General to bring charges against all five accused and no political discrimination has even been alleged by any of the learned counsel for the accused.

[13] For the aforementioned reasons the objections of learned counsel bear no merit. The application to remand the 1st 2nd and 3rd accused into custody is granted.

[14] Learned counsel however are permitted to revisit the issue in respect of the release of the 1st 2nd and 3rd accused on bail, once the evidence of witness Alex Monthy has been concluded by the prosecution.

Signed, dated and delivered at Ile du Port on 26 June 2015

M Burhan
Judge of the Supreme Court