

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 22/2016

[2017] SCSC 166

THE REPUBLIC

versus

FRANCIS ERNESTA

First Accused

BRIAN MOTHE

Second Accused

KEVIN QUATRE

Third Accused

DANNY SULTAN

Fourth Accused

Heard: 13th and 15th February 2017

Counsel: Mr. Chinnasamy Jayaraj Assistant Principle State Counsel
Mr. Clifford Andre Attorney at Law for the accused Persons

Delivered: 24 February 2017

ORDER

Burhan J

[1] I have considered the submissions of learned counsel on behalf of the 1st, 2nd and 3rd accused in respect of bail and the objections of learned counsel for the prosecution.

[2] Learned counsel for the accused relies on the following grounds:

a) the medical condition of the 1st accused.

- b) the fact that the case cannot be concluded by the next date i. e the 3rd of March 2017.
- c) That in similar cases referred to in their affidavits, accused have been released on bail under stringent conditions.

- [3] On perusal of the charges framed against these three accused, it is apparent the three accused have been charged with Trafficking in a controlled drug, Conspiracy to traffic in a controlled drug and Importation of a controlled drug. The controlled drug concerned is a Class A drug Heroin and the net total weight of the controlled drug is 746.9 grams containing 477.66 grams of pure Heroin. This in itself illustrates the seriousness of the charges with which the three accused have been charged. It is apparent from the charge that the three accused cannot be treated as users of the controlled drug but are alleged according to the charges framed to be importers and the providers of the controlled drug.
- [4] In regard to the medical condition of the 1st accused, he states he has an appointment with a Specialist on the 14th of March 2017. The medical certificate dated 4th July 2016 states the general condition of the 1st accused is good. This court is of the view that the medical certificate filed up to date does not indicate that the 1st accused is suffering from a serious ailment that would worsen with his continued remand in custody.
- [5] The other contention by the accused is there is no likelihood of the case finishing on the next date. As stated in the earlier Orders of this court, considering the serious charges faced by the accused, this case cannot be rushed and learned counsel for the three accused at his own request has been given ample time and opportunity to cross examine the witnesses and, I wish to reiterate the fact that it is learned counsel for the accused who has not been available on several trial dates, resulting in the case been adjourned for the benefit of the accused. He now cannot seek to take advantage of this fact. It is correct that the prosecution did move for an adjournment on the last occasion but that was due to medical grounds of the learned prosecution counsel which was supported by medical certificate and was an additional date fixed at his request, in order to expedite this case.

[6] By order dated 27th May 2016, this court came to a finding that there were sufficient grounds to remand the three accused. There are no change in circumstances at present to vary such an order. The facts of the cases referred to in which bail was granted are different to this case. In the *R v Choppy* case, the prosecution did not object to the granting of bail on medical grounds and subsequently withdrew the case against the accused. Each case and each bail application must be treated on its own merits as the facts would vary from case to case.

[7] The prosecution has already brought to the notice of court, the possibility of the accused interfering with the witnesses. The prosecution though having led the evidence of many witnesses, still relies on the evidence of several lay witnesses, including the evidence of witnesses who saw the unloading of the suspect gunny bags and the hiding of them under a Takamaka tree. Considering the seriousness of the charge as borne out by the severity of the penalty prescribed by law, there is a strong possibility of the accused absconding and interfering with these unprotected and fallible lay witnesses if released on bail, in the face of such a serious charge.

[8] In the case of ***Roy Patrick Brioché v The Republic SCA MA 6 of 2013*** it was held by AFT Fernando JA at page 6-

“It is to be emphasized that the right to be released at the pre-trial stage under article 18 (7) of the Constitution and once a person has been charged under section 179 of the Criminal Procedure Code are qualified rights ((emphasis mine) to be determined judiciously by the courts on whom the drafters of the Constitution have vested the judicial power of Seychelles. The only difference being that once a charge has been laid out it becomes the duty of the court to ensure that the accused is afforded a fair hearing within a reasonable time.”

[9] It follows therefore that the right to be released at the pre- trial stage and after being charged is not an absolute right but a qualified right. Considering the number of witnesses called by the prosecution, the lengthy cross examination of the witnesses and the numerous

objections taken and rulings and orders made in this case, it cannot be said that the case is being unnecessarily delayed, considering the fact this was a case filed in April 2016.

[10] Based on the reasons contained herein and the reasons in the orders dated 27th May 2016 and the 27th of September 2016, this court is satisfied that substantial grounds exist to continue to remand all three accused into custody.

[11] All three accused are accordingly further remanded into custody.

Signed, dated and delivered at Ile du Port on 24 February 2017

A handwritten signature in black ink, appearing to be 'M Burhan', is written over a diagonal line. Below the signature, the date '24/02/2017' is written in a similar cursive style.

M Burhan
Judge of the Supreme Court