

IN THE SUPREME COURT OF SEYCHELLES

CriminalSide: CO13/2017

[2017] SCSC 377

THE REPUBLIC

versus

YANNICK RADEGONDE

BENNY VALMONT

Accused

Heard: 02 & 03 May 2017

Counsel: Mr. K. Karuna Karan, Attorney General for the Republic
In person (unrepresented) for the accused

Delivered: 4 May 2017

ORDER

Vidot J

[1] This is an application in terms with Section 179 of the Criminal Procedure Code read with Article 18(7) of the Constitution praying for the remand of the accused in custody. At the time of hearing both Accused were unrepresented.

(2) The Accused are charged with Robbery with Violence contrary to Section 281, read with Sections 280 and 22 of the Penal Code. This relates to an incident whereby it is alleged

that on 06th April 2017, they attacked and robbed one Mason Hollanda, a taxi driver by using a knife. They stole from the latter the sum of SR2700/- and US\$20.

[3] The grounds on which the Republic seeks the application is that the offence is serious in nature that carries a maximum penalty of life imprisonment and that the Police had difficulty in apprehending the accused.

[4] Both Accused objected to the Notice of Motion and prayed that they are released on bail with conditions. The 1st Accused stated that he works as a mason and that he has contracts with clients who have already made payments to him and he is under obligation to hand over the completed works. He also stated that he has a family and that they are dependent on him and that his continuing detention will cause hardship. The 2nd Accused averred that he has co-operated fully with the Police with their investigation and that he is also assisting his family financially.

[5] Bail is a constitutional right provided for under Article 18(1) of the Constitution. Bail remains the rule and not the exception. As provided for in **Esparon v the Republic SCA 1,2 and 3 of 2014** such right can only be curtailed in *exceptional* cases where the prosecution has satisfied court that there are compelling reasons *in law and on facts* for remanding the accused. Article 18(7) provides for derogations whereby this right to liberty can be curtailed.

[6] The court should be able to evaluate the particular circumstance of the case and exercise its discretion to decide that there are **exceptional** reasons for remanding the accused. I find support for that position in the case of **Beeharry v Republic [2009] 11** whereby it was held that the right to liberty is subject to the rights of others and to the public interest. Another consideration would be if the release of the accused to bail could place his safety and security and that of other people at risk. Nonetheless, Article 18(7) advocates for release; either unconditionally or upon reasonable condition. That reinforces that remand should be adopted as a last resort.

[7] In assessing the merit of the Application, I remind myself that the Accused is presumed innocent until proven or have pleaded guilty as provided for under Article 19 (2) (a) of the Constitution.

[8] It is trite and it has been established in **Beeharry v Republic (supra)** that seriousness of the offence is not a standalone provision. However, in this case I note that there are allegations of the exercise of violence against Mr. Hollanda by use of a knife. I feel that Mr. Hollanda would have been shaken by such an experience. It is important that when considering any application for remand that the wellbeing and security of victims resulting from the unlawful act are protected. As was held in **Beeharry v Republic (supra)**, the right to liberty is subject to the right of others and to public interest. I also note that it took some time for the Police to be able to apprehend the Accused, thus I feel that it will be in the interest of justice that the Accused are remanded in custody for a further period of 14 days. Therefore, the application is allowed.

[9] Since the Accused were not represented by Counsels for the hearing of this application, it would be at their discretion to make necessary application for bail once counsels are appointed or retained, should they deem it necessary.

Signed, dated and delivered at Ile du Port on 1 May 2017

M Vidot

Judge of the Supreme Court