

IN THE SUPREME COURT OF SEYCHELLES

Criminal Side: CO 27/2017

[2017] SCSC 485

THE REPUBLIC

versus

ALBERT GEERS

1st Accused

MARY GEERS

2nd Accused

ALBERTUS GEERS

3rd Accused

Heard: 13 June 2017

Counsel: Mr. Kumar, for the Republic
Mr. Derjacques for the accused

Delivered: 13 June 2017

RULING

R. Govinden, J

[1] This is an application for remanding of the 1st accused person in this case, Mr. Albert Alexander Rodrigues Geers into custody pending the full determination of the matter.

The prosecution is moving the Court in pursuant to Section 179 of the Criminal Procedure Code as read with Article 18(7) of the Constitution.

- [2] The application for remand is supported by the affidavit of Agent Aubrey Labiche, an Agent of the NDEA.
- [3] The Republic's application is founded mainly on the seriousness of the offence charged in Count (1) and (2) of the charge sheet.
- [4] The Republic contended that the case is serious given the amount of cannabis substances found in the possession of the accused persons which amounts to a net total weight of 3.945 kilograms.
- [5] The Republic contends further that this case is serious because the cultivation was done by an enhanced indoor means and this is an aggravated factor under the Misuse of Drug Act. Mr. Kumar for the Republic argues that the new Misuse of Drug Act 2016 still contains retributive objectives, especially when it comes to dealing with trafficking cases and cultivation cases such as the one which is revealed by the facts of this case.
- [6] Mr. Kumar further emphasised that the public interests aspect of the right to bail, that is the right to liberty, is subject to the right of others and the public interests. He submits that the public interests favours the remand of the 1st accused in this case given the seriousness of the offence.
- [7] On the other hand, Mr. Derjacques who appears for all 3 accused persons strenuously objects to the remand application. He submits that the 1st accused was enlarged on bail on the 31st of May 2017 by the learned Magistrate Burian and that he had been cooperating with the NDEA since then. He further argues that the 1st accused has voluntarily submit to this Court by appearing before the Court according to this Court's summons this afternoon. Mr. Derjacques produced two rulings, one in respect of a bail order and secondly in respect of a sentence in the case of *Richard Allain Joseph and Ors* in which my learned brother Judge Vidot had released the accused on bail in a case in which the net value of the cannabis herbal material was 2 kilograms and 951 grams, and he argues that the Court should take notice and apply the judgment in this case.

- [8] Mr. Derjacques for the defence contends further that this Court should follow the approach of the learned Magistrate in the Court below by enlarging the accused on bail. The Court below in relying on the cooperation of the accused to the authorities and an averment or evidence of the deponent to the application of the NDEA, that he does not object to the imposition of bail. Learned Magistrate relied upon that to release the accused on bail.
- [9] Having carefully considered the submissions of both learned Counsels and having gone through the application for remand and its attached affidavit and having scrutinised the different rulings and judgment tendered before this Court, I find the following;
- [10] I find that the bail under the Constitution is a right, but this right can be denied if there are compelling circumstances warranting the denial to bail. The burden of proof is on the Republic to show that the situation is such that there exist compelling reasons for remanding an accused person based on the facts before the Court.
- [11] One of the compelling reason that will leave this Court to deny accused of his right to bail is that accused person will not be present before this Court at a later stage of the proceedings, *vide* Article 18(2)(b) of the Constitution.
- [12] A compelling reason that will entice an accused person not to appear at a later stage of the proceeding would be the seriousness of the charge and the likely penalty that the accused, if convicted and sentenced would face. However, this needs to be assessed bearing in mind the totality of the facts of the case. Also, antecedent conducts, persistent conducts, previous breach of bail conditions of an accused person.
- [13] The Court of Appeal in the case of *Esparon versus Republic, Beharry versus Republic* has ruled that an accused person could be granted bail provided strict conditions are imposed that will allow him to appear at a later stage in the proceedings.
- [14] I am not bound by the finding of the learned Magistrate in this case. The conditions that will compel the Court to assess and appreciate the circumstances of the accused person is entirely different from that which appeared before the learned Magistrate in the Court below. When he appeared before the learned Magistrate Burian he was still a suspect,

now he accused of two very serious offences under the Misuse of Drugs Act with very severe penalties.

[15] I take into consideration the rulings in the case of *Republic versus Richard Joseph & Ors*, however, this case was determined on its own facts and merits and circumstances, and the circumstances of the accused in the *Joseph* case is totally dissimilar from the one in this case and I notice also that the amount of drugs is lesser and therefore of a less serious nature than this case.

[16] However, I note that the accused was enlarged by the Magistrate Court below on a 101 Criminal Procedure Code, remand application proceedings. In note that hence after he has shown corporation with the authorities. I find that he has thereafter obeyed the process of this Court by appearing voluntarily on the summons of the Supreme Court this afternoon. These facts militates in his favour.

[17] When I balance the gravity of the offence and all the circumstances that will otherwise have made an order for remand fit, with the fact that he has willingly submit himself voluntarily to the investigation authorities after he was released, and being investigated with two serious offences, the fact that he had not attempted to abscond the due course of justice, and the fact that he has voluntarily appeared before this Court in answer of the Supreme Court summons, the compellable reason for his remand is very much lessen. Accordingly I will impose the following conditions on the 1st accused person;

- (i) He will deposit in Court a cash deposit in the sum SCR100,000/-;
- (ii) He will furnish 2 sureties to be approved by the Supreme Court Registrar who will each sign a bond of SCR50,000/-;
- (iii) He will refrain from coming into contact or interfere with prosecution witnesses;
- (iv) He will report the Beau Vallon Police Station 2 times weekly at 6 p.m. on Mondays and Fridays;
- (v) He will surrender all his travelling documents to the Registrar of this Court;
- (vi) He will not leave Mahe island without the consent of the Court;

- (vii) The Director of Immigration is to be informed of these orders.
- (viii) Failure or breach of any of these orders will entice this Court to rule that you have failed to comply with the bail conditions and therefore remand you in Police custody until the full determination of this case.

FURTHER ORDER

[18] Having heard Counsel for the defence and Counsel for the Republic, this Court impose the following conditions on the 2nd and 3rd accused person, being condition of bail. I release both the 2nd and 3rd accused on bail on these conditions;

- (i) They will each deposit a sum of SCR50,000/- with the Registrar of this Court;
- (ii) Both 2nd and 3rd accused are refrained from contacting or interfering with any witnesses of the Republic and the NDEA;
- (iii) Both 2nd and 3rd accused are to report at the Beau Vallon Police Station on Mondays at 6 p.m.;
- (iv) Both 2nd and 3rd accused are to surrender their travelling documents, including their passports to the Registrar of this Court. It will be released subject to justification and authorisation of this Court;
- (v) Both the 2nd and 3rd accused are not to leave Seychelles without the authorisation of this Court;
- (vi) The Immigration Authorities will be notified of this order;
- (vii) Failure or breach of any of these order may lead to the cancellation of the bail conditions.

[19] I rule accordingly.

Signed, dated and delivered at Ile du Port on 13 June 2017

R. Govinden
Judge of the Supreme Court